United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

NO. 76-4046

United States Court of Appeals

FOR THE SECOND CIRCUIT

CARRIER AIR CONDITIONING COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION TO REVIEW AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

APPENDIX

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UNITED STATES COURT OF APPEALS
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ERRATUM

The letters appearing on pages 130 and 145 have been mislabeled and placed in the wrong position. Edward Stack's letter of March 21, 1975, should not have been labeled Appendix AA, rather that letter should have been placed at page 145 as an attachment to General Counsel's Exhibit 20. The November 7, 1974, letter of Edward Stack now appearing at page 145 is Appendix AA and should have been placed at page 130.

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JD-406-75
Bronx, New York

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D. C.

SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION,
LOCAL 28, AFL-CIO

and

CARRIER AIR CONDITIONING
COMPANY, A DIVISION OF
CARRIER CORPORATION

Case No. 2-CC-1296

SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION,
LOCAL 28, AFL-CIO

and

CARRIER AIR CONDITIONING
COMPANY, A DIVISION OF
CARRIER CORPORATION

and

THREE BORO SHEET METAL AND
VENTILATING CO., INC.
Party to the Contract

Case No. 2-CE-66

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Kenneth C. McGuiness, Esq.,
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Metal and Air Conditioning
Contractors Assn., New York
City Chapter.

DECISION

Statement of the Case

JAMES V. CONSTANTINE, Administrative Law Judge: This is an unfair labor practice case litigated pursuant to the provisions of Section 10(b) of the National Labor Relations Act, herein called the Act. 29 U.S.C. 160(b). It was commenced by a consolidated complaint issued on February 28, 1974, by the General Counsel of the National Labor Relations Board, herein called the Board through the Regional Director of its Second Region (New York, N.Y.). That complaint is based on a charge filed on October 25, 1973, and one filed on December 27, 1973, by Carrier Air Conditioning Company, herein called Carrier. Said charges and the complaint name Sheet Metal Workers International Association, Local 28, AFL-CIO, herein called Local 28, as the Respondent, and the complaint names Three Boro Sheet Metal and Ventilating Co., Inc., herein called Three Boro, as Party to the Contract.

In substance said complaint as amended at the trial alleges that Respondent violated Section 8(b)(4)(i) and (ii)(B) and 8(e), and that such conduct affects commerce within the meaning of Section 2(6) and (7), of the Act. Respondent, also called Local 28 herein, has answered admitting some allegations of the complaint but denying that any unfair labor practices were committed. On November 18, 1974, Sheet Metal and Air Conditioning Contractors National Association, New York Chapter, Inc., herein called the Association, was permitted to intervene as an Interested Party.

Pursuant to due notice this case came on to be heard, and was tried before me, at New York, New York, from March 10 to 14, both inclusive, and April 15, 1975. All parties were represented at and participated at the trial, and had full opportunity to introduce witnesses, file briefs, and offer oral argument. Briefs have been received from the General Counsel, Carrier, and Local 28. Respondent's motion to dismiss was denied.

Upon the entire record in this case, and from my observation of the demeanor of the witnesses, I make the following:

Findings of Fact

I. As to Jurisdiction

Carrier, a division of Carrier Corporation, a Delaware corporation, is engaged in the United States in manufacturing, selling, and distributing air-condition equipment and related products. During 1973, a representative period, Carrier sold and distributed products

valued in excess of $50,000, of which products valued in excess of $50,000 were shipped from its places of business in interstate commerce directly to States other than the States in which it is located. I find that Carrier is an Employer within the meaning of Section 2(2), and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction over Respondent in this proceeding.

II. The Labor Organization Involved

Local 28 is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. General Counsel's Case

A. C. Contardi, Carrier's district manager for its machinery and systems division which covers metropolitan New York, testified substantially as follows. In such division Carrier "primarily operates in the construction and engineering phases" of refrigeration, heating, and "the entire line of air conditioning." When the owner of a building needs such equipment Carrier works with the owner's architect and the owner's mechanical engineer "in the design of this equipment." As a result Carrier's "equipment is part of the design, included in the specifications . . . so that when the job is bid by the owner through general contractors, we will get a fair chance to bid competitively."

After a contractor bids on a job Carrier deals with the contractor "to sell them the equipment, which meets the specifications, which is part of the design." A 37P unit is "a Moduline terminal device which controls the air, which varies the volume of the air which is discharged into the room." See General Counsel's Exhibit 2, Appendix A. Another type of Moduline unit is in General Counsel's Exhibit 2, Appendix B. 37P units have been manufactured by Carrier since 1963.

Carrier's 37A and 37P units are manufactured in Tyler, Texas, and prefabricated there. In 1966 and 1967 Carrier attempted to market the 37P unit in the New York City area. At that time Carrier showed such a unit to President Farrell and Mulhearn of Local 28. Said officials of Local 28 said that such unit "could not come into New York," but if "the so-called plennum section [thereof] should be made in [a] New York [shop, a Local 28 affiliated shop] then the unit could come in." Thereafter Carrier did supply such units for some buildings in the New York area. Farrell told Carrier that the unit "could not be installed. the lower section would have to be made in New York in a Local 28 shop

. . . the fuser plate . . . and the plennum section [should be] made locally." Apparently Farrell's request was not honored by Carrier.

Later Carrier was "brought up on charges within" the Mechanical Contractors Association, to which it belonged, for making the above part of the unit away from New York. Farrell, who attended, complained that Carrier was "fabricating this stuff in a nonunion shop down in Texas," and stated "the unit as made would not come into New York." In January, 1967, Carrier again met with Farrell. A "deal was consum ated" to let Carrier proceed with two New York jobs it was supplying in return for Carrier's "proceeding to attempt to design a unit that would fulfill [Farrell's] requirements.

A few months later Carrier supplied the unit in the New York Police Office Building. Farrell objected to Carrier as to the design of the job because, among other things, "they were using the Moduline unit as designed in Tyler, Texas." Farrell also claimed that Carrier was not living up to the above "deal" which it made with Farrell. Ultimately they came to an agreement. See General Counsel's Exhibit 2, Appendix G. Said agreement in part provides that "Carrier . . . are presently developing a system of the terminal which would make possible the manufacture of the plennum by the Local" i.e., Local 28. As a result of said agreement Triangle Sheet Metal Company, which has a collective-bargaining contract with Local 28, received an order from New York City to provide the plennums for the Police Office Building.

Following October, 1967, when the foregoing agreement was entered into, Carrier made efforts to market the 37P units as redesigned in New York City, but "just couldn't sell the unit . . . . It was not economically feasible, it would not sell." So in 1970 C arrier introduced its 37A unit. This unit was manufactured in Tyler, Texas. In August, 1970, Farrell requested Contardi of Carrier to abide by the agreement (General Counsel's Exhibit 2, Appendix G), so that the plennums on 37A units would be manufactued in New York City. Contardi replied that Carrier had been unsuccessful in marketing the 37P unit, and that the 37A unit as manufactured by Carrier "had more appeal to the industry, because it's narrower." He also informed Local 28 on this occasion that "we were not able to fulfill what we had talked about previously about making the plennum section in New York and we asked for consideration." Farrell took it "under advisement" but, until he died in 1972, Farrell "maintained his old position. He did not change."

After Farrell passed away he was succeeded as president of Local 28 by Pasquinucci. Contardi soon met with Pasquinucci and informed the latter that Carrier "couldn't make the unit as proven by evidence. We hadn't sold the job in several years." Then Pasquinucci answered he would appoint a committee to study the problem and come up with a recommendation, but that "until we had some kind of understanding" Carrier "could not bring the unit in. The unit as made was unacceptable in New York.

Pasquinucci did appoint such a committee and Contardi appeared before it in September, 1972. Contardi demonstrated to them with an actual plennum section. He demonstrated to them that the way Local 28 wanted things done "they could see why it [the plennum made in New York] was leaking, they could see why we had the problems and that it was a bad deal." He "showed them how and why it leaked" when the plennum was manufactured in the New York area. Later the Local 28 committee made a recommendation which was presented to its Executive Board and gave Contardi a copy thereof. (See General Counsel's Exhibit 2, Appendix I). Said committee recommended "acceptance of Carrier Moduline variable system factory fabricated, leak tested. and calibrated."

In late November, 1972, Contardi spoke to Pasquinucci, asking the latter "what he was going to do, inasmuch as he didn't get it by the Executive Board." Pasquinucci "felt this unit should be admitted to New York" as fabricated in Tyler, Texas, notwithstanding that the Local 28 Executive Board disagreed with him. In early 1973 Pasquinucci had one of the committeemen "make a presentation to the membership [of Local 28] at one of the union meetings in an effort to sell the membership on the idea" espoused by Carrier. But the membership turned down "the idea."

In August, 1973, C arrier received an order for 37A units from its distributor, Carlton Stewart, for a job at the Van Etten Drug Treatment Center. As the architect and the engineer on this job had decided "to put Moduline on the job." Carrier's Baltimore office worked with said architect and engineer "for the design of the job." Three Boro was the sheet metal contractor on said job. In October, 1973, Contardi complained to Dan Pasquinucci of Local 28 that Dan "had refused to let them sketch the job," and that Dan "will not permit this unit to come into New York." Dan replied, "That's so." Such sketching was to be performed by a union mechanic who was a member of Local 28. Consequently a charge under Section 8 of the Act was filed by Carrier against Local 28

In November, 1973, Contardi and other representative of Carrier met with Dan Pasquinucci to "discuss the problem." Dan insisted that he "could not permit the unit to come in and suggested that [Carrier consider] sending into New York the cut pieces of the unit, deliver them to some shop in New York, which could take the cut pieces and put them together and make the units." Dan further stated that ultimately, after Local 28 men "got the experience, . . . the entire unit would be made in New York." Later Contardi informed Dan that Carrier "would not bring any units in for fabrication in New York."

Then in January, 1974, Carrier shipped seven 37A units to the Van Etten Drug Treatment Center, and the remainder in February.

In February, 1974, Local 28 and Carrier arrived at an agreement that the Van Etten job should go ahead without interruption, that Carrier would by March 15 "prepare an outline of what had been [agreed upon] in writing," and "it was understood we would not sign it until July 1st." Carrier did prepare such outline.

In May, 1974, Dan Pasquinucci discussed with Contardi a job at Presbyterian Hospital. Dan suggested he should reactivate the Local 28 committee, mentioned above, and that Contardi meet with it. Contardi met with that committee in late May and attempted to convince it that the plennum "was a minor portion of the work that they lost. The unit would . . . definitely increase the total volume of work for them," i.e., for Local 28. Apparently no agreement was reached on such issue.

On July 1, 1974, Stack defeated Pasquinucci in an election for the presidency of Local 28. Contardi met with Stack on July 19. Stack promised to review the situation with the Executive Board or Local 28 "and others" and would then "have an answer." A few days later Stack informed Contardi that Local 28 was "going to insist that [Carrier] go along with the agreement as written," i.e., "Local 28's agreement with the association."

On cross Contardi explained in detail how a plennum, as well as the entire unit of which it is a part, functions. Among other things, Contardi stated that the unit "can never work separate of the plennum . . . in order to give the guarantee that we give with that unit, we assemble part of the plennum with part of" a section of the unit, called the control assembly. He also mentioned that a "plennum [is] used in practically every air conditioning system, in one fashion or another."

Further, on cross, Contardi testified that members of Local 28 did work on some plennums in the past made in New York by Employers having contracts with Local 28 but not on plennums of the type known as 37A and 37B. These latter types and the units of which they were a part have always been made by Carrier in Tyler, Texas. But President Farrell of Local 28 claimed that such plennums should be made in New York. Farrell also brought charges against Carrier before the Joint Adjustment Board that Carrier was "bringing in a unit that shouldn't be brought in here," and that this violated the contract between Local 28 and an Association to which Carrier belonged.

Then in November Farrell claimed Local 28 members should make the plennum on Carrier's 37P unit because the plennum was a "customary, traditional item made by the [Local] 28 men." Later Carrier and Local 28 agreed that Carrier would attempt to design the unit to be made in two

pieces so that the plennum would be made in New York. Up to then it was Carrier's position that the unit was one piece and the plennum, as part of that one piece, was to be made somewhere else than in New York.

Further, on cross, Contardi testified that on the Police Office Building job Triangle Sheet Metal fabricated and provided the plennum using plans and specifications supplied by Carrier. Later Triangle claimed said plans and specifications were incorrect. This was settled by Carrier's paying Triangle $10,000 in addition to the regular contract price to "modify" the said plennums. But Carrier made said payment only because it guaranteed to the New York police that said plennums would function and thus was responsible for Triangle's errors in "not maintaining the tolerances" on such plennums. Such incorrect tolerances caused the units to be defective and to leak on the jobsite. So Carrier paid the $10,000 to Triangle "to modify the boxes so we [Carrier] could fulfill the guarantee." Finally, on cross, Contardi testified that, although by reason of Carrier's fabricating the unit some work would be lost by members of Local 28 in the New York City area, there would be additional work, such as "additional duct work," for such members by reason of their installing the unit which "would more than offset the loss of the plennum."

On redirect Contardi testified that the air conditioning units installed at the World Trade Center were sold by Carrier. Notwithstanding that the plennum for such units was manufactured in Tyler, Texas, members of Local 28 installed said units at the Center. Also, Carrier has sold similar air conditioning systems as well as other types of systems in the New York City area, and the units thereof, "literally hundreds of thousands," including their plennums, were manufactured in Tyler, Texas. Yet members of Local 28 installed those systems in the New York City region "without question or problems with respect to who was to perform the work or fabrication of any aspect of that."

Raymond Skorupa, an architect, testified essentially as follows for the General Counsel. He was employed by Isadore and Zachary Rosenfeld as a project architect from 1972 to December, 1974. He produced the drawings and specifications on the Van Etten Hospital job. (See General Counsel's Exhibit 2, Appendix P and particularly pp. 15B-19 & 20). These call for the use of Carrier Moduline 37A units because they were recommended by the engineering firm of Henkins and Anderson and thereafter the owner approved the installation of such units.

On cross Skorupa testified "as far as I was concerned, it didn't matter where the unit [or the plennum for Van Etten Hospital] was manufactured, any part of it . . . I didn't care where any of the pieces were manufactured, as long as they met the criteria in the specifications."

Nor did the specifications provide who was to fabricate any of the components for the unit or where the unit or its three components were to be assembled.

Another witness for the General Counsel was Lawrence Sturgis. An adequate synopsis of his testimony follows. He is president of Advanced Control Corporation, which manufactures items for the heating, ventilating, and air-conditioning industry. From 1966 to 1973 he was executive director of the promotion fund of the sheet metal industry. Said fund is interested in increasing work opportunities for members of Local 28. Prior to that he was a consulting mechanical engineer. Such an engineer designs a system which "has optimum operating advantage keeping down the costs" in heating, ventilating air-conditioning plumbing, and electrical work."

As executive director of the foregoing promotion fund Sturgis co-operated with a Local 28 committee which was studying variable volume air conditioning units, one of which was Carrier's Moduline unit. According to Sturgis, a sketcher in the sheet metal industry is one "who does the complete layout and background [or] the structural, architectural, and to some extent the plumbing and piping . . . work in a given project, where it applies to the ventilation industry." Sketchers are members of Local 28.

In the fall of 1972 he asked President Dan Pasquinucci of Local 28 to appoint a committee to study the variable volume system, and Dan did so. Later Dan indicated to Sturgis that Dan had read said committee's report and looked upon it favorably. Said report is in evidence as General Counsel's Exhibit 2, Appendix I, and its stated purpose is "To Evaluate the Carrier Moduline Variable Volume Unit." Said committee recommended unanimously "acceptance of Carrier Moduline variable volume system, factory fabricated, leak tested, and calibrated." Pasquinucci told Sturgis that he favored the committee report but had to obtain the approval of the Executive Board of Local 28.

Later in the fall of 1972 Sturgis met with the Executive Board of Local 28. He argued that "the variable volume system [be] brought into New York" because it would "increase the net amount of work that would be done by members of Local 28." Members of said Board then questioned Sturgis about the possible "loss of work opportunity by not manufacturing the plennum box that is attached to the unit." Admitting such loss Sturgis contended that if the plennum was not made in New York "the variable volume system would more than make up for that particular loss." But Sturgis later learned that the Board turned down his recommendation.

In early 1973 the Joint Adjustment Board, a group consisting of labor and management, and Sturgis discussed the Carrier Moduline system. He urged said Board to "adopt a favorable policy towards" the

On cross Sturgis testified that, to his knowledge, Local 28 "always" fabricated the plennum or the box in a unit. But he added that such plennums differed from those in a 37A "both in the controls that are placed inside the unit and the function that it serves." In his discussions with President Pasquinucci of Local 28 Sturgis agreed that a plennum was a box, but disagreed that it was a routine box and insisted that "the variable volume system was far more sophisticated as a unit than the normal plennum above a linear diffuser." However, it made no difference to Sturgis whether the components of the variable volume boxes were made in New York, Texas, "or any place else," or if the plennum was made in New York and the other parts elsewhere.

Additionally, on cross, Sturgis testified that he appeared before the Joint Adjustment Board, a group composed of Employers and Local 28, to "modify or amend" his agreement, i.e., "to try to have them waive the claims that the work was done historically" by Local 28. See G.C. Ex. 2, Appendix W-i. But on that occasion he contended before the Joint Board that "the variable volume unit [i.e., the whole unit, including the plennum box] is obviously a relatively new item in the industry. There is nothing historical or traditional about it . . . . I didn't ask that something historically and traditionally made by 28 be not made" by Local 28. Finally, on cross, Sturgis asserted that prior to the introduction of the Carrier Moduline Unit Local 28 had not made a box which was cut and fabricated in such a manner that a control and assembly, such as that used on a Carrier unit, could be attached; but there are now about 10 shops in the New York City area which are producing comparable boxes.

Howard Bretz, a member of Local 28 and a sheet metal draftsman for Triangle Sheet Metal, testified substantially as follows for the General Counsel. He is also a sketcher. A sketcher prepares shop drawings on the drawing board. About 6 years ago President Farrell of Local 28 appointed him to its Research & Review Committee to made a study of variable volume systems. Such study, which was undertaken in 1972, was suggested by Larry Sturgis of the Industry Fund. Then said committee issued a unanimous report recommending "acceptance of Carrier Moduline variable volume system, factory fabricated, leak tested, and calibrated." See G.C. Ex. 2, Appendix I, p. 1.

Such report was then presented to Executive Board of Local 28 on October 12, and again on November 21, 1972. On the latter date the said Committee recommended that Local 28 accept Carrier's request that Local 28 waive a provision of said union's "standard form of union agreement to fabricate the boxes, the plennums." This recommendation would cause some loss of work to Local 28 members but would result in additional other work which would more than offset said loss of work. But the Executive Board made no decision respecting this proposal at

that time. Said Board met again on June 5, 1973, and further studied the problem, On this last occasion the Board rejected the Committee's proposal.

At a General Membership meeting after said June 5 rejection, Bretz objected to acceptance of the Board's position, and recommended "two pilot jobs to see if this [the Committee's proposal] was a workable solution." But the members at said meeting accepted the Board's recommendations and rejected those of the Committee.

Another witness for the General Counsel, Joseph Reyes, declared under oath substantially as follows. He is president of Acme Climate Control Corporation, which is engaged as a contractor in heating, ventilating, and air-conditioning. Acme received a contract on October 1, 1973, from Ormar Construction Company to work on the Van Etten Drug Treatment Center. See G.C. Ex. 2, Appendix R. Subsequently, on December 6, 1973, Acme made a contract with Three Boro Company, the "Party to the contract" in the instant case (See G.C. Ex. 2, Appendix T), but this contract was preceded by an understanding dated October 8, 1973. See T-1 of said Appendix T.

Sometime in October, 1973, Acme commenced performing work at the foregoing jobsite. Originally the sketches pertaining to Acme's work required the installation of Carrier's Moduline Units. One day, following a conversation with Ted Johansmeyer, a sketcher on the job employed by Three Boro, and who was a member of Local 28, Reyes observed that the Carrier Moduline Units had been erased from the tracing or sketch. Johansmeyer told Reyes that the former had made said erasures. Reyes assumed that Johansmeyer had prepared the sketch originally with the Moduline Units drawn in.

On February 15, 1974, Reyes wrote to Three Boro that "all of the Carrier Moduline units are ready for delivery . . . to the [Van Etten Drug Treatment Center] job." See G.C. Ex. 16. On February 21, 1974, Three Boro replied by letter to Acme that Carrier's Moduline Units contained plennums "which is not in our proposal . . . of October 8, 1973," and that said proposal "is in conformance with our signed contract agreement with" Local 28. See G.C. Ex. 17. Then on February 25, 1974, Acme wrote to Three Boro, "it is our understanding that all differences have been resolved between Local 28 and Carrier Corporation insofar as the installation of Carrier Moduline units for [the Van Etten Drug Treatment] job . . . . Based on this agreement you have agreed to proceed with the installation of these [Carrier] units." See G.C. Ex. 18.

Acme's purchase order for such Carrier units is set out in G.C. Ex. 2, Appendix 5. Said order involves, according to Reyes, complete units "with the plennum box attached." At no time did Acme make arrangements or agree to have any component part, such as the plennum, of the Carrier Moduline Units to be fabricated "somewhere else" than Carrier, such as by Three Boro.

Daniel Fragnito, another witness for the General Counsel, gave testimony substantially as follows. He is Carrier's engineering section manager for the Moduline units manufactured in Tyler, Texas. The first 37P Moduline unit was installed in 1961 in a high school in Beaumont, Texas. In 1970 he visited Essex Sheet Metal Company's shop in the New York City area "to look at a plennum" in connection with a job invlolving Staten Island Community College in New York City. Essex, which recognizes Local 28 and has a contract with it, made a plennum for Carrier's Moduline unit. What he saw "didn't have a chance in the world of working" because it could not satisfactorily be "mated" with Carrier's Moduline unit, and he explained this to Essex.

Fragnito in 1969 provided a special design of the Carrier Moduline 37P unit for the New York Police Headquarters job. Triangle Sheet Metal Company called on him at Carrier's Syracuse, New York, laboratory, in December, 1970, to "check out the installation procedure of the unit" in a "mock-up installation" of the unit. Such "mock-up" presented "some problems at the time of installation" which demonstrated "it was very difficult to insure . . . a proper . . . air seal." Further, he testified that on the Moduline 37A unit "it is much more difficult to put on [the plennum section] separately," i.e., it is "it is better for [Carrier] to produce the whole thing [in Tyler,Texas] than to have some of it produced by [Carrier] and some of it [the plennum] by someone else."

Continuing, Fragnito explained why it was almost necessary, and certainly better, for Carrier to make the plennum in Tyler, Texas, rather than have outsiders in New York fabricate it. In this connection he mentioned that those in Tyler, Texas, including "supervisory and management people," fabricating such units receive special training to qualify them to manufacture such units, and that the plant there is specifically designed to manufacture units with the plennum included in the units. In fact, according to him, "it would be extremely difficult" to "mate the plennum boxes to the controls" if the plennums are manufactured "outside of Carrier's Tyler, Texas, plant."

Finally, on direct, Fragnito testified that patents cover Carrier's Moduline Units 37A and 37P, and that the plennum cannot be produced in the "Local 28 shops" without obtaining permission from Carrier as the holder of such patents. The Staten Island job, the

New York Police Headquarters job, and perhaps "one or two other minor jobs" had their plennums made by a manufacturer in the vicinity of New York City under a license from Carrier as the patent holder. Except for those jobs mentioned in the preceding sentence no other manufacturer than Carrier had made Moduline Units 37A or 37P.

On Cross, Fragnito testified that Carrier received complaints that the Moduline Units installed on the New York Police Building job and the Staten Island job were not functioning properly. Also, on cross, he testified that the special training and equipment connected with Carrier's Tyler, Texas, plant could be effected elsewhers"as long as they were within the manufacturing plans of Carrier . . . and as long as [Non-Carrier manufacturers] had the backup information and the backup personnel."

Further, on cross, Fragnito stated that on the New York Police Headquarters job all the parts of the unit but the plennums were manufactured by Carrier in Tyler, Texas, that the plennums were fabricated by Triangle in the New York City area, and that Triangle assembled all of said parts at the jobsite to produce complete units. He gave the same answer with respect to the Staten Island job on which Essex installed the Moduline units, i.e., Essex fabricated the plennums and assembled the entire unit on the job, although Carrier made parts other than the plennums. But, according to Fragnito, Triangle fabricated said plennums differently from the way Carrier did, so that complaints about leaks were received by Carrier. Such complaints were submitted to Carrier because it guaranteed the entire unit.

At this point in the trial the parties stipulated that Carrier Moduline units 37A and 37P are sold throughout the United States and that such units, including the plennum portion are installed as fabricated in Carrier's Tyler, Texas, factory by members of Locals of Sheet Metal Workers International Association without objection except in that area within the jurisdiction of Local 28. Examples of such installations are shown in G.C. Ex. 8 with deletions therein for installations in New York City.

It was further stipulated that on or about March 3, 1975, members of Local 28 employed by General Sheet Metal, Inc., began installation of Carrier 37af Moduline units at Babies Hospital Addition, pursuant to an agreement (See G.C. Ex. 2, Appendix y) between General Sheet and H. Cohan Contracting Corp.; that the Joint Adjustment Board on or about March 5, 1975, discussed charges (See G.C. Ex. 2, Appendix aa) brought against General Sheet; that no final action was taken on the resolution (See G.C. Ex. 2, Appendix bb) of Local 28 at said meeting or on any other disposition of said charges.

Then the General Counsel rested.

B. Respondent's Defense

Dan Pasquinucci was Respondent's first witness. His testimony may be condensed as follows. He is now an organizer for Sheet Metal Workers International Association. Previous to that he was a business agent and then president of Local 28. He served as such president from April, 1972, until June 30, 1974. In September, 1972, he discussed Carrier's Moduline units with Larry Sturgis, the executive director of "the Industry fund." Sturgis said he was interested in promoting such units in New York City as he felt "it meant an additional amount of work for the membership of Local 28." Dan replied he was interested if it meant more work to the "shop men" of Local 28, "but it meant a modification of our collective-bargaining agreement" because "we had members of Local Union 28 fabricating a similar box" for the last 15 years. So Dan said that the Local 28 Executive Board would have to approve the Carrier Moduline unit because of the said provision in said union's bargaining contract. Dan promised to submit the question to the Research and Review Committee of Local 28 for further consideration.

Later Dan submitted the issue to the aforesaid committee of Local 28. Said committee submitted a report to him recommending "acceptance of Carrier Moduline variable volume system." See G.C. Ex. 2, Appendix i. He concurred in the committee's views, and presented such report to the Executive Board of Local 28, informing said Board he went along with the Committee's recommendation. He told the Board that "it would bring extra work into Local Union 28 . . . [although] it was in violation of our [collective-bargaining] agreement." But the Board disapproved the Committee's recommendation that Carrier, and not Employers having contracts with Local 28, fabricate the plennums. See G.C. Ex. 5 and 6.

Shortly after December 6, 1972, Dan informed Sturgis of the Board's rejecting the Committee's recommendation of Carrier's fabricating the plennum on Moduline units. Then Sturgis appeared before the Board in February, 1973, but after discussing the problem with him the Board concluded it would adhere to its position but suggested that Sturgis present the problem to the Joint Adjustment Board.

Sturgis did appear before said Joint Board and suggested a "pilot project . . . to see if . . . it would bring more work into the Local." Local 28 representatives present promised to refer the question of a pilot project to their Executive Board. Such question was given to the said Executive Board about April, 1973. However, such Executive Board later rejected said proposal of Sturgis. See G.C. Ex. 6. Thereafter Dan communicated to Sturgis the fact that such proposal was rejected by the Executive Board.

In October, 1973, Contardi called Dan Pasquinucci to tell Dan that the sketcher on the Van Etten job had refused to sketch the job. Dan replied "I was just going tolive under my contract" but added that he "wasn't going to stop any jobs." Later, Dan met with Contardi in December, 1973, to attempt to resolve their differences. But nothing was accomplished. Then Dan held another meeting with Contardi in February, 1974, "to see if we couldn't resolve the Van Etten job." It was agreed, among other things, that "Carrier Corporation would withdraw from selling the Moduline unit until we had resolved our differences." On March 12 Contardi gave Local 28 a written proposal embodying a solution of their differences. See G.C. Ex. 2, Appendix U. Dan promised to submit this proposal to the Executive Board of Local 28 after July 1.

In May, 1974, Dan told Contardi that Dan had been notified that some Carrier salesmen were promoting the Moduline unit on certain jobs in New York City, and added that he, Dan, felt that this was in violation of their oral agreement made in February, 1974. Contardi agreed to look into this.

Fred Zwerling, president of Triangle Sheet Metal Corporation and its subsidiary, Moduline Metal Corporation, testified substantially as follows as a witness for Local 28. Triangle performed, among other things, the air-conditioning work on the New York City Police Headquarters Building. This included installing the Moduline unit 37P for such headquarters. At the time Triangle bid on said job "there was an understanding between Carrier, the City, the design engineer, and Local 28 that the plennum portion of the unit would be fabricated by Local 28 in New York City." So Triangle purchased the Moduline section of the unit from Carrier, and Triangle "manufactured the plennum to fit that unit."

Then Triangle fabricated said plennums in its plant at College Point, Queens, by employees belonging to Local 28. Triangle had made plennums "similar or compatible to this . . . many times" prior to this. "It was very simple sheet metal work." Then Triangle assembled at the jobsite the portion of the unit which Carrier furnished to the portion furnished by Triangle, using members of Local 28 for such purpose. Such assembling was "no more difficult or more complicated than many other jobs [Triangle] had done." Triangle started the Police job in 1970 and completed it in 1974. No unusual problems "with the operation or installation of these units were encountered.

Prior to installing the units Triangle ran some tests on them and discovered some leakage of air from the plennum Moduline combination which Zwerling claimed resulted from Carrier's improper facbrication. So Trial called "this defect" to the attention of Carrier. See R. Ex. 4. Carrier advised Triangle how to correct this. See R. Ex. 5 and 6. However, this involved "additional expense and cost to Triangle." This cost was submitted to Carrier (See R. Ex. 7) and the latter made a "settlement" thereof. See R. Ex. 8. After the units were installed they were tested "with respect to their air "distribution in the unit and these disclosed that "the building was working satisfactorily, and accepted by the owner for occupancy." Carrier guaranteed the operation of that portion of the Moduline unit which it furnished.

On cross Zwerling testified that, prior to the Police Building job, Triangle never manufactured plennums for Carrier's Moduline units, and that "the only time that Triangle has ever fabricated plennums in relation to Carrier's Moduline unit was the Police Headquarters job." He also asserted on cross that his company has never installed any Carrier 37A model units at any place.

John J. Flannery, for 17 years president of J.J. Flannery, Incorporated, a sheet metal contractor, was a witness for Respondent. His testimony may be summarized as follows. Prior to this he was a sheet metal estimator of Howard Platter Co. for 5 years. This latter position required him to prepare bids on heaters, ventilators, air-conditioning, and kitchen exhuasts. J.J. Flannery, Inc., subcontracts work for mechanical contractors in the field of sheet metal work, outlets sound traps, and the work "necessary to take care of the air side in a high pressure or low-pressure air-conditioning job."

About 5 years ago J.J. Flannery, Inc., first "performed any work with regard to the Carrier moduline units" when it made 1300 or 1400 boxes for the Bache & Co. job in New York City but did not install them. Actually the boxes were fabricated for Alvord & Swift, the mechanical contractors on the Bache job. These boxes were "the plennum section from the top" on 37P units. Employees who were members of Local 28 drew the sketches and fabricated said boxes. In the past J.J. Flannery, Inc., has fabricated "similar" or "comparable" boxes "to this plennum."

J.J. Flannery, Inc., also, about 2 or 3 years ago, made about 30 or 40 Carrier 37P plennums for Alvord & Swift as part of the duct system at the Presbyterian Hospital's Harvest [Harkness?] Pavilion. On this job Flannery, Inc. assembled at its shop the said plennums Carrier units which Flannery purchased without the plenumms, and then installed the entire units with the plennums included therein

at the jobsite. The plennums for these units on this job were fabricated and assembled and then the unit was installed at the jobsite by members of Local 28 employed by Flannery, Inc. Since said unit "was a new item and they [Carrier] were concerned about it [Carrier] checked it out and said it was fine."

Flannery, Inc. received no complaints from Carrier as to the plennums on the Hospital job or from anyone as to the Bache job or the Hospital job.

About a year and a half ago Flannery, Inc., received an order from Alvord & Swift to perform more of the same kind of plennum work at said Hospital's Vanderbilt Clinic. "It was all part of the same complex at Presbyterian Hospital." This involved the same unit, i.e., Moduline 37P of Carrier, and "essentially the same" plennum fabricated for the Harvest Pavilion. Said plennum was assembled as part of the unit, the remainder, i.e., all but the plennum, having been supplied by Carrier. Said units were assembled by members of Local 28 in Flannery's shop and then installed on the jobsite by members of Local 28. Said Vanderbilt job was tested and said test disclosed that "minor corrections as to the air quantity" had to be made. After said corrections were completed "the system was ultimately approved."

The foregoing jobs were the only ones on which Flannery, Inc., worked which involved Carrier's Moduline Units.

On cross Flannery was unable to say whether the foregoing Bache job involved Carrier units, and "it could have been some other unit." Further, on cross, he averred that Flannery, Inc., never made a box or a plennum for a Carrier 37A unit. Finally, on cross, Flannery stated that he wasn't sure how many units his company installed on the Harvest [Harkness?] Pavilion job.

Thomas Berrill, president of a sheet metal contractor, Lambert Sheet Metal Corp., testified for Respondent. He has been a dues paying member of Local 28 since 1941. An abstract of his testimony follows. He is not familiar with the Carrier Moduline Unit. Lambert Corp did a job at Columbia Presbyterian Hospital installing Buensod's "variable volume system specified in that contract." Alternates to Carrier's Moduline Units are those of Arastack and also of Buensod. The contract included a "reference to a Carrier Moduline unit or an alternate." Lambert "bid the alternate," which was Buensod's.

A variable volume system "is a system where you get through a thermostat a variable amount of air, or more air or less air as the occasion requires . . . it is done by a thermostat that controls the volume regulator." Carrier's Moduline Units, Buensod's versa-trol

system, and Aeronca's versa-trol system all perform that function. On a versa-trol system the plennum is attached to a "line diffuser, or a regular diffuser, and it is controlled automatically throughout the thermostat by air."

In Berrill's opinion the system of the Buensod is similar to Carrier's, in that Buensod's has a plennum, "To [him] it looks very similar," although he had no experience in or knowledge in installing a Carrier unit. In his opinion "the plennum of the Carrier system [is] similar to the plennum in the Buensod system"; and although he described one difference, he was unable to state what other differences existed between the two systems. Members of Local 28 have fabricated Lambert's plennum boxes, as Lambert has a collective-bargaining contract with said union.

Lambert also has shipped variable volume units with plennum boxes to other jobs but did not install them. On these occasions the contractor on the job installed such units. However, such units lacked diffusers, as "we don't make diffusers." But he did not know where such contractors obtained such diffusers for the variable volume units.

On Cross Berrill stated that Lambert never fabricated a plennum which "had anything to do with the Carrier 37A or 37P unit." Also on cross he asserted that Lambert is the exclusive manufacturer in New York City of Buensod's plennums. Finally, on cross, Berrill testified that the specifications in the contract on the Columbia Hospital job "called for the Carrier Moduline Unit or an alternative." However, he did not know how an alternate to Carrier's unit was selected as the mechanical contractor, for whom Lambert was the sheet metal work subcontractor, made that decision.

Another witness for Respondent was Jack Mckeogh, manager of Essex Metal Works. A summary of his testimony is set forth here. Essex performs sheet metal work, air-conditioning, and sheet metal fabrication installation. In 1970 Essex "performed work in regard to the 37P unit" of Carrier. It did so as a subcontractor to CDE Mechanical Contracting Company on the Staten Island Community College in New York. Essex furnished and installed plennums on this job. The "furnishing aspect consisted of" fabricating a sheet metal plennum, installing it on the module in the shop, and then delivering the module to the jobsite. The module was shipped to the Essex shop by CDE, which bought the same from someone whose name is not in the record.

While the module was in the Essex shop Essex drew sketches "of the application of the plennum to module." See R. Ex. 10 for such a sketch or drawing. Then the plennum was fabricated in the Essex shop by its employees. Said employees were members of Local 28. After this the plennums were assembled on the module in the shop. A Carrier

representative came to the shop "to approve the type of fabrication [Essex was performing] on the unit." After this Local 28 field men installed the units at the jobsite. The CDE tested and approved the installed units. But Essex did not give a warranty or guarantee "involving the installation." However, it never received any complaints as to the operation or functioning of said installed units.

On cross Mckeogh asserted that the Staten Island job was the only occasion on which Essex "performed any work in relation to the Carrier Moduline units."

Edward Stack, president of Local 28 since July, 1974, was another witness for Respondent. An adequate condensation of his testimony follows. He was a business agent for Local 28 for slightly more than 7 years prior to becoming its president. In July, 1974, Contardi of Carrier requested Stack "to implement the agreement between Local 28 and Carrier . . . regarding the . . . rise of the Moduline Unit in the City of New York," said agreement having been mailed about March 12 to President Pasquinucci of Local 28. Stack promised "to review it." When Contardi telephoned Stack a few days later Stack informed him that Local 28 "remained consistent with its agreement." Said agreement was between Local 28 and the Sheet Metal Contractors Association as well as some independent sheet metal companies.

At this point Respondent rested.

C. General Counsel's Rebuttal

Augustus Contardi's testimony as a rebuttal witness is briefly set forth here. He visited the completed Bache & Co. job at Pearl and Gold Streets in Manhattan, New York City, already mentioned above by other witnesses, on March 14, 1975. Carrier did not sell and Moduline 37A or 37P units for said Bache & Co. job. Further there are no variable volume units on said job, regardless of whether Carrier or anyone else manufactured them.

At this point both parties rested except for the right to introduce further evidence on an incident which occurred at a job during the trial. The case was continued for this limited purpose to April 15, 1975.

D. The Resumed Hearing on April 15, 1975.

At the hearing on April 15, 1975, the parties entered into the following written stipulation. See G.C. Ex. 20. Immediately after the meeting of the Joint Adjustment Board on March 7, 1975 Morris Lipka,

president of General Sheet Metal Works, Inc., instructed members of Local 28 to cease, and they did cease, installing Carrier Moduline units on the Babies Hospital Addition job. On or about March 17, 1975, Lipka met with President Stack of Local 28, and advised Stack that General Sheet would pay $2153.60 to the Local 28 Sick Dues Relief Fund as set out in said Local's proposed resolution as found in G.C. Ex. 2, Appendix BB. (Said proposed resolution accused General Sheet of "permitting work covered by our Agreement - fabrication of plennums - involving the Carrier Dual Moduline unit for installation at the Presbyterian Medical Center, Babies Hospital . . . to be performed by persons who are not within the bargaining unit covered by our Agreement . . . Resolved that General Sheet . . . make payment of the sum of $2153.60 to the Local 28 Sick Dues Relief Fund, representing the Loss of hours caused by General's said violation . . . 160 hours at the rate of $13.46 per hour.")

Said stipulation further provides that Stack told Lipka that said charges would be settled; that General Sheet paid said $2153.60 about March 20 and resumed installation of said units; and that about March 21 Stack wrote to General Sheet a letter confirming the terms of the above settlement. Said letter is attached to the stipulation.

In addition, Augustus Contardi testified substantially as follows for Carrier, the Charging Party herein. About March 14, 1975, Ed Simek of Colonial Mechanical, accompanied by Morris Lipka of General Sheet, met with Contardi to discuss the fact that General Sheet had stopped working on the Babies Hospital job. Lipka stated he had stopped the men working on said job because General Sheet had been brought up on charges and was subject to a fine. Simek stated he "could not tolerate the pressure." Consequently, Contardi stated to Lipka to settle the charges with Local 28 and Carrier would reimburse General Sheet for the amount assessed by Local 28 on such charges. Carrier did later so reimburse General Sheet. See Charging Party's Ex.1 and 2 for General Sheet's request for such reimbursement.

IV. Concluding Findings and Discussion

In arriving at the findings set forth below I have observed the following applicable principles of law. (a). The burden of proof is upon the General Counsel to establish his case, and this obligation remains with him during the entire trial. A corrollary is that no burden is imposed upon Respondent to disprove any of the allegations pleaded in the complaint. (b) Failure of the Respondent to establish any one or more of its defenses does not amount to affirmative evidence aiding the General Counsel in proving his case. (c) As hereafter recited I have not credited Respondent's evidence on some aspects of the case. But this does not contribute to the General Counsel's burden of proving his case. N.L.R.B. v. Berggren, 406 F. 2d 239, 246(C.A. 9);

Ri-Del Tool, 199 NLRB 969,973. "The mere disbelief of testimony establishes nothing." N.L.R.B. v. Joseph Antell, Inc., 358 F. 2d, 880, 883 (C.A. 1).

A. The Collective Bargaining Agreements between Local 28 and Three Boro and Sheet Metal Air Conditioning Contractors Association

I find that Three Boro and the Association each has a collective-bargaining agreement with Local 28 which contains a no subcontracting clause which contravenes Section 8(e) of the Act. This is because I find not only that said clause (See G.C. Ex. 2. Appendix E, p.40) on its face contravenes Section 8(e) of the Act, but also because Pasquinucci as president of Local 28 told Contardi of Carrier that Carrier could not bring its Moduline Unit into the New York City area until they had some kind of understanding.

Even after a committee of Local 28 unanimously recommended that Carrier's Moduline Unit be accepted in the New York area because such units would create more work for members of Local 28, such recommendation was turned down by both by the Executive Board and the membership of Local 28. As Pasquinnucci creditably testified on this phase of the case, the Executive Board of Local 28 was not willing to modify the collective-bargaining agreements of Local 28 in relation to the fabrication of plennums.

In this connection I find, crediting Contardi, that President Farrell of Local 28 stated that Carrier's units manufactured in Tyler, Texas, "could not come into New York" unless the plennum section thereof was manufactured in New York in a shop which had a collective-bargaining agreement with Local 28. And I also find that Carrier was also "brought up on charges within" the Mechanical Contractors Association, to which it belonged. Later still Farrell objected to Carrier's Moduline Unit being installed on the New York Police Office Building job because the plennum for such unit was being fabricated in Tyler, Texas,

Also, Dan Pasquinucci, as president of Local 28, admitted to Contardi that, on the Van Etten Drug Treatment Center job Dan had refused to let members of Local 28 "sketch the job" and "would not permit this unit [i.e., Carrier's Moduline Unit] to come into New York." Yet the owner of said building had decided to install Carrier's Moduline Unit at said Treatment Center and his architect had so provided in the specifications submitted to contractors who bid on it. Three Boro was the air-conditioning subcontractor on said job, but its sketcher, Johansmeyer, a member of Local 28, erased from the blueprints the use of Carrier moduline units.

When Contardi complained of this to Pasquinucci the latter stated that he would not permit this unit to come into New York. I find no right of control by Three Boro over the type of unit or its composition to be used on this Van Etten job.

Another instance of a violation of Section 8(e) of the Act is the Babies Addition to the Columbia Presbyterian Hospital. Here again I find no right of control in the subcontractor, General Sheet Metal, Inc., so that Local 28, with whom it had a contract as a member of the Association, had no lawful right to insist that General fabricate the plennums, especially since the building owner's specifications called for an installation of Carrier's Moduline Units. And I further find, as contended by the General Counsel, that such specifications "contemplated that the work of fabricating such plennums would not be done by sheet metal contractors."

Also, I find that the charges filed by Local 28 against General with the Joint Adjustment Board cannot be upheld by Section 8(e) of the Act, since the provisions in the collective-bargaining contract between Local 28 and the Association forbidding subcontracts allowing plennums to be fabricated outside of New York are not lawful. Cf. Connell Construction Co., Inc. v. Plumbers and Steamfitters Local Union No. 100, decided 6/2/75 by the U.S. Supreme Court, 43 U.S. LawWeek at 4660,4661; 89 LRRM 2401. In said Connell case, the Supreme Court at p.4660 held. "We conclude that Section 8(e) does not allow this type of agreement."

In this connection I find that said clauses in the contracts of Local 28 were not to preserve work for its members but their tactical object was to obtain benefits, i.e., fabricating plennums, for members of Local 28 which were being enjoyed by Carrier's employees in Tyler, Texas. See National WoodWork Manufacturers Assn. v. N.L.R.B., 386 U.S. 612,644,645.

Moreover, I find that the Carrier Moduline Unit is a new and different product and that fabrication and installation of these special units is not work traditionally and historically performed by on site sheet metal workers belonging to Local 28. And I further find that Local 28, by applying the aforesaid work preservation clause, "was trying to adquire work performed by employees" of Carrier in Tyler, Texas. See AGC of California, Inc. v. N.L.R.B., 88 LRRM 3542,3545(C.A.9). And I find that Local 28 used coercion to attain said objective, said coercion being not only the refusal of its members to install said units but also the filing of charges by Local 28 against Employers signatory to contracts with it. One of such charges resulted in one Employer's, General Sheet, paying $2153.60 to the Local 28 Sick Dues Relief Fund.

As the Ninth Circuit Court of Appeals pointed out in the above AGC case, "Inevitably, no subcontractor who is bound by a provision of the type involved here will install prefabricated [products] unless he has an agreement that he will be reimbursed for assessments and other sanctions levied against him. This practice will influence the business decisions of

hospital builders." 88 LRRM at 3546. This language is equally applicable to the hospital builders in the instant case, and I so find. And I further find that the construction industry proviso to Section 8(e) of the Act is not applicable because "the disputed work," i.e., the plennums, "was done off the jobsite at the plant of [Carrier] in another State." See 88 LRRM at 3346. In my opinion, I consider distinguishable and, therefore, not requiring a contrary conclusion, the recent case of United Brotherhood of Carpenters, Local 112, AFL-CIO, 217 NLRB No. 129.

Crediting the General Counsel's evidence, and not crediting Respondent's evidence to the extent it is not consonant with the General Counsel's, I find that pursuant to an agreement between Local 28 and Carrier applicable to the Police Office Building job, the work of fabricating plennums for Carrier's Moduline units for said job was given to Triangle, which employed members of Local 28. But Triangle did not prepare said plennums properly, so that Carrier, having guaranteed the entire unit, suffered about $10,000 in additional costs to render the units properly workable. As noted above I have found the pertinent clause in the Local 28 collective-bargaining contract violative of Section 8(e) of the Act. However, assuming such clause not unlawful as worded, I find that under the circumstances, i.e., the inability of Triangle and other subcontractors such as Essex Metal Works, to fabricate a workable plennum demonstrates that Carrier was unable to obtain any orders for Moduline Units if plennums therefore were to be fabricated separately by others than Carrier. Indeed a Local 28 Committee so found in a report it submitted to said Union. See G.C. Ex. 2, Appendix I. And the testimony of Larry Sturgis, which I credit, concurs in said Committee's report.

Further, I find that the Local 28 Executive Board on May 30 and June 5, 1973 (See G.C. Ex.6) voted that "no allowance in [collective-bargaining agreements] be made to allow the dual Moduline Mixing Box in the New York City area." This also depicts coercion on the part of Local 28, assuming that coercion must be shown to demonstrate that the subcontract clause is invalid under Section 8(e) of the Act. Of course this occurred more than 6 months before the lates charge against Local 28 was filed, so that it cannot be found to constitutes unfair labor practice. But it demonstrates that Local 28 was doing more than merely preserving work, as it shows that it was compelling Carrier, a Tyler, Texas, manufacturer, to produce its Moduline Units without a plennum.

It is also of some, but not conclusive, significance that the entire Moduline Unit, including its plennum, is not only manufactured in Tyler, Texas, but also that several patents cover the separate parts which compose the unit. It would seem that Carrier's right to fabricate the entire unit is assured by said patents, and that the efforts of Local 28 to cause Carrier to surrender such patent protection to others with whom

Local 28 has a collective-bargaining agreement is not a right conferred upon Local 28 by the National Labor Relations Act. Cf. the Supreme Court's decision in the Connell Construction Company case, supra where it was held that the said labor relations Act does not authorize unions to violate the federal antitrust laws. See 43 U.S. Law Week at pp. 4660-4661.

Further, I find that, on the evidence which I credit, some of which is set out in the Local 28 Committee's report, Local 28 members will not lose any work if Carrier continues to manufacture the plennums for its Moduline Units. And the record fails to disclose that Local 28 members have traditionally or historically fabricated these Carrier plennums over an extended period of time in the past. The two times when Local 28 members produced Carrier's plennum not only fail to rise to the stature of tradition or history but also arose only because Carrier consented thereto as an effort to settle the dispute with Local 28.

B. The Section 8(b)(4) Violations

1. As to Section 8(b)(4)(i)(B)

This subsection, so far as material herein, forbids a labor organization from inducing an employee to refuse to perform services for his Employer where an object thereof is to force or require any person to cease doing business with any other person. I find that the Respondent has violated this subsection.

In this connectiion I find, crediting Contardi, that Dan Pasquinucci, the president of Local 28, admitted to Contardi in October, 1973, that Dan "had refused to let [Local 28 members] sketch the [Van Etten] job" and that Dan "will not permit this [Moduline] unit to come to New York." I find that Dan's conduct constitutes inducement or encouragement of employees where an object thereof is to have contractors refuse to do business with Carrier, i.e., contractors would be unable to use Carrier's Moduline unit. And I further find that this violates Section 8(b)(4)(i)(B) of the Act. One of the employees so induced was Ted Johansmeyer, a member of Local 28 and a sketcher for Three Boro on the Van Etten Drug Treatment Center job.

Further, I find that the Executive Board of Local 28 made a decision to refuse Local 28 members the right to install Carrier's Moduline units (See G.C. Ex.5) and that this decision was adopted by the membership of Local 28. This amounts to inducement or encouragement, and I so find, and I further find that an object thereof is to force or require contractors not to do business with Carrier by purchasing or using Carrier's Moduline units.

2. As to Section 8(b)(4)(ii)(B)

In essence this part of the Act prohibits a Union from threatening, coercing, or restraining any Employer where an object thereof is to force

or require any Employer to cease doing business with any other Employer. I find that Respondent did engage in conduct, set forth below, which violated this subsection of the Act.

a. Crediting Contardi, and not crediting Dan Pasquinucci, I find that the latter informed Contardi in October, 1973, that Dan had refused to allow Local 28 members to sketch the Van Etten Drug Treatment Center job and that Dan would not permit Carrier Moduline units to come into New York. This, I find, constitutes coercion an object of which is to force or require Three Boro to cease doing business with Carrier. The a-chitect and the engineer on this job had decided "to put Moduline on the job," and Three Boro as the sheet metal contractor was to install Moduline Units.

b. In November, 1973, Dan Pasquinucci told Contardi that Dan insisted that he "could not permit the [Moduline] unit to come in" to New York. This, too, contravenes the subsection of the Act which is discussed at this point.

c. In July, 1974, President Stack of Local 28 informed Contardi that said Union "was going to insist that [Carrier] go along with the agreement as written," i.e., "Local 28's agreement with the Association." It is my opinion, and I find, that Stack's statement is coercive and is intended to force Carrier to change its methods of manufacturing Moduline units by not making plennums for its Moduline units. It is also coercive as to Three Boro and other Employers in the Association. I find that such statement contravenes the subsection of the Act here under consideration.

d. Finally, I find that it is not necessary that a complete cessation of business dealings occur to find a violation. It is sufficient that Respondent's conduct causes Carrier to alter its Moduline units by delivering them without plennums. Thus I find that Respondent interfered with Carrier's process of delivering complete Moduline units and prevented contractors doing business with Carrier from obtaining such complete units. Cf. Retail Clerks Union, Local 770, 145 NLRB 307, 311-312. And see Retail Clerks Union, Local 1428, 155 NLRB 656, 659-660; Local Union No. 26, Sheet Metal Workers Assn., 168 NLRB 893, 895,899-900.

V. The Effect of the Unfair Labor Practices Upon Commerce

Those activities of Respondent set forth in Section IV, above, found to constitute unfair labor practices, occurring in connection with the operations of Carrier described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. The Remedy

Having found that Respondent has engaged in certain unfair labor practices it will be recommended that it cease and desist therefrom and that it take certain affirmative action, described below, designed to effectuate the policies of the Act.

On the record as unfolded at the trial, I am unable to find that Respondent has demonstrated any general hostility to the Act. Accordingly I find that an Order prohibiting Respondent from committing the conduct herein found to contravene Section 8(e) and 8(b)(4)(i) and (ii)(B) of the Act will effectuate the policies of the Act, and that an Order broader in scope is not warranted. Cf. the Board's Order in Sheet Metal Workers Local No. 150, 170 NLRB 772, 774.

Upon the basis of the foregoing findings of fact and the entire record in this case, I make the following:

Conclusions of Law

1. Respondent Local 28 is a labor organization within the meaning of Section 2(5) of the Act.

2. Carrier and the other Employers involved in this case are Employers within the meaning of Section 2(2) of the Act. Carrier is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By its conduct in enforcing Articles 4(b) and 16 of the collective-bargaining contract between Local 28 and Three Boro and similar clauses in the collective-bargaining contract between Local 28 and the Association, Local 28 has engaged in unfair labor practices within the meaning of Section 8(e) of the Act.

4. By coercively refusing to allow Employers with whom Local 28 has collective-bargaining contracts in the New York City area to install Moduline Units unless said units lacked Carrier's plennums, Local 28 engaged in unfair labor practices within the meaning of Section 8(b)(ii)(B) of the Act.

5. By Pasquinucci's refusing to allow Local 28 members to sketch the Van Etten job and his not permitting Carrier's Moduline unit to come to New York City, and by the Local 28 Executive Board's decision to refuse to allow said units to be installed in the New York City area, said decision being adopted by the membership of said Local 28, Respondent engaged in unfair labor practices within the meaning of Section 8(b)(i)(B) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, it is recommended that the National Labor Relations Board enter an Order as follows: 1/

ORDER

Respondent, Local 28, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Enforcing any collective-bargaining agreement it may have with Employers in the New York City area insofar as said agreement requires such Employers to cease, or refrain from, handling, installing, or otherwise dealing in Carrier Moduline units when such units contain plennums manufactured by Carrier and said plennums are included as a component or constituent part of said Carrier Moduline units.

(b) Coercively refusing to allow Employers with whom Local 28 has collective-bargaining contracts in the New York City area to install Carrier Moduline units unless said units lacked Carrier's plennums, where an object thereof is to force or require such Employer's to cease doing business with Carrier.

(c) Inducing or encouraging employees of Employers in the New York City area having collective-bargaining contracts with Local 28 to refuse to install complete Carrier Moduline units with Carrier's plennums, for such Employers, where an object thereof is to force or require such Employers to cease doing business with Carrier.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post in conspicuous places in its business offices meeting halls, and in all places where notices to members are customarily posted, copies of the attached notice marked "Appendix." 2/ Copies of said notice, to be provided by the Regional Director for Region 2, after being signed by a duly authorized representative of Local 28,

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1/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

2/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily displayed. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director for Region 2 signed copies of said notice for posting by Employers in the New York City area having collective-bargaining contracts with Local 28, if said Employers are willing, in places where notices to employees of said Employers are customarily posted. Copies of said notice, to be supplied by said Regional Director, shall be transmitted by him to said Employers.

(c) Notify the Regional Director for Region 9, in writing, within 20 days from receipt of this Decision what steps have been taken to comply herewith.

Dated at Washington, D. C.

James V. Constantine

James V. Constantine
Administrative Law Judge

FORM NLRB-4725
(4-71)

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT enforce any collective-bargaining agreement we may have with Employers in the New York City area in sofar as said agreement requires such Employers to cease, or refrain from, handling, installing, or otherwise dealing in Carrier Moduline units when such units contain plennums manufactured by Carrier and said plennums are included as a component or constituent part of said Carrier Moduline units.

WE WILL NOT coercively refuse to allow Employers with whom we have collective-bargaining units in the New York City area to install Carrier Moduline units unless said units lack Carrier's plennums, where an object thereof is to force or require such Employers to cease doing business with Carrier.

WE WILL NOT induce or encourage employees of Employers in the New York City area having collective-bargaining contracts with us to refuse to install complete Carrier Moduline units with Carrier's plennums, when an object thereof is to force or require such Employers to cease doing business with Carrier.

SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION,
LOCAL 28, AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed with floor Federal Building, 26 Federal Plaza, New York, N.Y.

MFP

222 NLRB No. 110

D--864
Bronx, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

...DON P...

SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION,
LOCAL 28, AFL--CIO

and

CARRIER AIR CONDITIONING
COMPANY, A DIVISION OF
CARRIER CORPORATION

Case 2--CC--1296

SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION,
LOCAL 28, AFL--CIO

and

CARRIER AIR CONDITIONING
COMPANY, A DIVISION OF
CARRIER CORPORATION

and

THREE BORO SHEET METAL AND
VENTILATING CO., INC.

Case 2--CE--66

Party to the Contract

DECISION AND ORDER

On July 17, 1975, Administrative Law Judge James V. Constantine issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief, the Charging

Party filed limited exceptions, and the Charging Party and the General Counsel filed briefs in support of the Administrative Law Judge's Decision.[1/]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings of the Administrative Law Judge made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Administrative Law Judge's Decision, the exceptions, and briefs, and the entire record in the case,[2/] and hereby adopts the findings,[3/] conclusions, and recommendations of the Administrative Law Judge only to the extent consistent herewith.

The amended complaint alleges that Respondent violated Section 8(b)(4)(i) and (ii)(B) by adopting a resolution in or about May 1973 that its members would oppose the installation of Carrier's moduline air-conditioning units unless they fabricated the plenums for said units, and by the October 1973 refusal of one of its members employed by Three Boro to perform certain sketching work preparatory to and necessary for the installation of Carrier moduline units. The complaint further alleges that Respondent violated Section 8(b)(4)(i) and

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1/ The Intervenor, Sheet Metal and Air Conditioning Contractors National Association (hereinafter SMACNA) did not file a brief.

2/ The Respondent has requested oral argument. The request is hereby denied inasmuch as the record, the exceptions, and the briefs adequately present the issues and positions of the parties.

3/ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

(ii)(B) by informing Carrier representatives on or about October 23 and November 26, 1973, that its members employed by Three Boro would not be permitted to make sketches for the Carrier moduline units and on those same dates and again on July 23, 1974, that Respondent was not going to permit Carrier units to be installed in New York because employees represented by it were not fabricating the plenums. Finally, the complaint alleges that by the above acts, the Respondent applied the no-subcontracting clauses in its contracts with SMACNA and Three Boro in violation of Section 8(e). At the hearing, the complaint was amended further to allege that in November 1974, Respondent, by bringing industry charges against General Sheet Metal, Inc., violated Section 8(b)(4)(B) and (e) of the Act. The Administrative Law Judge found the violations as alleged. We disagree. We believe that a contrary result is dictated by our decisions in Associated General Contractors [4/] and Kimstock Division. [5/]

The collective-bargaining agreement between Respondent and Sheet Metal and Air Conditioning Contractors National Association, New York Chapter, Inc., to which Three Boro Sheet Metal and Ventilating Co., Inc., is bound by a separate agreement, contains a no-subcontracting clause which provides in pertinent part:

4/ Southern California Pipe Trades District Council No. 16 of the United Association, et al. (Associated General Contractors of California, Inc.), 207 NLRB 698 (1973).

5/ Southern California Pipe Trades District Council No. 16; Plumbers & Steamfitters Local No. 582 (Kimstock Division, Tridair Industries, Inc.), 207 NLRB 711 (1973).

D--864

II. MEMORANDUM CONTAINING
NO SUBCONTRACTING CLAUSE

For the preservation of the work opportunities of the journeyman sheet metal workers and apprentice sheet metal workers within the collective bargaining unit, each Employer within the collective bargaining unit shall not subcontract out any item or items of work described hereinbelow; except that each said Employer shall have the right to subcontract for the manufacture, fabrication or installation of such work with any other Employer within the collective bargaining unit:

1. Radiator enclosures except when manufactured and sold as a unit including heating element.

2. Functional louvers.

3. Attenuation boxes except for mechanical devices contained therewith.

3a. Sound traps.

4. Dampers: All types of Dampers, including Automatic Dampers and multi-Zone Dampers, Manual Control Dampers and Fire Control Dampers, except Patented Pressure Reducing Devices. OBD's and Santrols are per sketches B and C annexed hereto.

5. Skylights, Sheet Metal Sleeves, Pressure Reducing Boxes, Volume Control Boxes, Troffers (plenums), High Pressure Fittings and Gutters (excluding 1/2 Round Gutters).

6. Air handling units in excess of 30,000 C.F.M.'s.

7. All other work historically, traditionally and customarily performed by journeyman sheet metal workers and apprentice sheet metal workers within the collective bargaining unit in accordance with the collective bargaining agreement.

All the work described in this "no-subcontracting clause" shall be performed by journeyman and/or apprentice sheet metal workers in the bargaining unit covered by this agreement.

No penalty is specified in the no-subcontracting clause. However, Rule XIX of the agreement provides that the penalty for violation of the agreement shall

be censure for the first offense; and on the second offense, imposition of a fine commensurate with the loss adjudged by the Joint Adjustment Board to have been sustained by journeyman sheet metal workers by reason of such violation.

Background

Carrier manufactures moduline air-conditioning units. It began the manufacture of a variable volume moduline air-conditioning unit, designated the model 37P unit, in the early 1960's. Later improvements led to the development of the 37A unit which has been manufactured since 1970. Both of these units included prefabricated plenums. Although numerous parts of each are patented, the plenum is not. The plenum is essentially a four-sided sheet metal box which, inter alia, serves for the housing or receipt of air and noise abatement. In the New York metropolitan area, Local 28 members have traditionally fabricated and installed the plenums on conventional air-conditioning units. Carrier's position is that, due to the design of the moduline units, specially trained personnel working under the supervision of Carrier engineers and utilizing costly equipment are required to perform the work of mating the plenum to the control portions of the unit and the calibration and adjustments necessary to assure proper plenum pressure and air flow.

Carrier first attempted to market its moduline unit in the New York metropolitan area in 1966. Carrier had contracts for the installation of 37P units at its home office and at Presbyterian Hospital. At a meeting in November 1966, Respondent's president told Carrier's district manager, Contardi, that the plenum section of the unit should be made in a New York shop having an agreement with Local 28. In January 1967, the 37P units with prefabricated

plenums were delivered to Carrier's home office for installation. The president and a business agent of Respondent told Contardi that these units could not be installed; the plenums would have to be made in New York. The matter was brought before the Joint Trade Board by Respondent. Subsequently, on or about January 29, 1967, it was agreed that the installation of the 37P units would proceed at Carrier's home office and at the Presbyterian Hospital in consideration for which Carrier would redesign the unit so that the plenum could be made in New York.

In September 1967, Carrier became involved in the construction of a new Police Office Building for the City of New York. The building specifications called for the use of Carrier's 37P units. As a result of the objections of Respondent's president to the use of the 37P units, a series of meetings occurred in September and October 1967 between union officials, Carrier's representatives, and representatives of the City. On October 31, 1967, the parties agreed that Carrier would develop a design which would make possible the fabrication of the plenum in New York shops and that Carrier would assume responsibility for the air-conditioning units on the project even though the plenums were to be fabricated in a local shop. Thereafter, the plenums used in the 37P units installed in the Police Office Building were manufactured by Triangle, a shop employing employees represented by Respondent. After installation of these units, it developed that there were serious problems with leakage in the units for which Carrier was held liable. Carrier contends that the fabrication of the plenums in New York shops made the moduline units defective and uncompetitive in price, and consequently difficult to market.

Carrier developed the 37A unit in 1970. On or about August 8, 1970, Carrier representatives met with Respondent's president and other union agents. Carrier representatives showed the union agents the new 37A unit, stating that it was well received throughout the country, that it was a new design, and in their opinion, the plenums for it could not be made in New York. Respondent's response was that a study of the problem would be made. A number of subsequent meetings failed to produce a resolution of the dispute.

In August 1972, Contardi and other Carrier representatives met with Respondent's president, then Daniel Pasquinucci. As a result of this meeting, Pasquinucci referred the matter to the research and review committee, a committee of three union members known for their expertise and experience in the industry. After studying the problem, this committee recommended acceptance of the moduline unit, factory fabricated, leak tested and calibrated.

Facts Surrounding the Alleged Violations

On June 5, 1973, Local 28's executive board adopted a resolution that "no allowance be made in the c.b.a [collective-bargaining agreement] at all to allow the dual Moduline Mixing Box in the New York city area." This resolution was presented to and adopted by the general membership on June 21, 1973.

In early 1973, plans were prepared for the construction of the Van Etten Drug Treatment Center. The mechanical specifications for heating, ventilation, and air-conditioning called for the use of "variable volume linear air diffusers, Carrier Moduline or approved equal." The heating, ventilation, and air-conditioning contractor on the project, Acme Climate Control Corp., issued a purchase order for the Carrier 37A units pursuant to the specifications. Subsequently, Acme

subcontracted certain sheet metal work, including the installation of the Carrier 37A units on the project, to Three Boro, who was by a separate agreement bound to the terms of the collective-bargaining contract between Respondent and SMACNA. On October 8, 1973, the verbal agreement between Acme and Three Boro was confirmed in a letter in which Three Boro stated:

> We agree to install only (furnished by others) air outlets, fans, air conditioning equipment (50% labor) automatic dampers, sound traps.
>
> We take exception to the following: removals of ductwork, cutting, patching, painting, housekeeping, pipe sleeves, testing and balancing, fin-tube enclosures, plenums for Carrier units (supply outlets) . . . .

On October 18, 1973, the erasure of the Carrier Moduline units from the drawings of the Van Etten job was discovered. Joseph Reyes, the president of Acme Climate Control Corporation, testified that Ted Johansmeyer, a sketcher employed by Three Boro and a member of Respondent, told Reyes that he had erased the Carrier units from the drawings. Upon being informed of the problems on the Van Etten job, Contardi called Pasquinucci. Contardi's account of the telephone conversation, which the Administrative Law Judge credited was:

> **Contardi:** Dan I hear there's trouble on the Van Etten job. Dan, I understand you have refused to let them sketch the job.
>
> Pasquinucci: That's so.
>
> Contardi: Dan, are you, as a union representative, telling me, as representative of Carrier, that you will not permit this unit to come in, into New York?
>
> Pasquinucci: That's so.
>
> Contardi: Well, you know what this is going to mean.
>
> Pasquinucci: That's so.

Carrier filed the charge in Case 2--CC--1296 on October 25, 1973, based on the events concerning the Van Etten job. However, the parties continued

to attempt to resolve the dispute without litigation. On November 13, 1973, Contardi and other Carrier spokesmen met with Respondent's officials. At this meeting Pasquinucci told the Carrier representatives that "he could not permit the unit to come in [to New York]." On December 27, 1973, Carrier filed the charge in Case 2--CE--66.

In January 1974, Columbia Presbyterian Hospital entered an agreement with H. Cohan Contracting Corporation to perform all the mechanical work on its Babies Hospital Addition, in accordance with the building specifications prepared by architects and consulting engineers. The specifications called for the installation of Carrier's 37AF air terminal units, including plenums as fabricated by Carrier. Cohan confirmed the purchase order with Carrier for the 37AF units with plenums installed on May 29, 1974. On or about June 11, 1974, Cohan subcontracted certain sheet metal work on the project, including installation of the Carrier moduline units as specified, to General Sheet Metal, Inc. General is a member of SMACNA and is bound by the standard form agreement between that association and Respondent.

Meanwhile, in March 1974, Pasquinucci and Contardi tentatively agreed that Respondent would accept Carrier's moduline units as factory fabricated in consideration for which Carrier would withdraw the instant unfair labor practice charges and promote the moduline units so as to provide additional sheet metal work. This agreement was not executed due to the upcoming union election which Pasquinucci lost to Robert Stack. On July 19, 1974, Contardi met with the newly elected president, Stack, to discuss the agreement made with Pasquinucci. After reviewing the situation, Stack told Contardi that Respondent had decided to "insist that [Carrier] go along with the agreement as written."

Respondent filed charges against General under the SMACNA agreement on November 7, 1974, and requested a hearing and determination by the Joint Adjustment Board.[6/] The grievance charged that:

> General is in violation of our Collective Bargaining Agreement, Addendum "B", Part II, last unnumbered paragraph, by permitting and for accepting work covered by our Agreement---fabrication of plenums---involving the Carrier Moduline Unit, for installation at the Presbyterian Medical Center, Babies Hospital, (168th Street and Broadway New York City) to be performed by persons who are not within the bargaining unit covered by our Agreement, rather than by its journeyman and apprentice sheet metal workers.

Respondent proposed that General pay the sum of $2153.60 to the Local 28 Sick Dues Relief Fund, representing the loss of man hours caused by General's alleged violation. As a result of this claim, General ceased the installation of the Carrier units at the Babies Hospital site. The work was not resumed until Carrier agreed to reimburse General for the amount claimed by Respondent.

Discussion

As noted, the Administrative Law Judge found that the presentation to and adoption by the general membership on June 21, 1973, of the executive board resolution that no allowances be made in the collective-bargaining agreement for the moduline units, constituted a violation of Section 8(b)(4)(i)(B). We disagree. Respondent's executive board simply phrased the proposition to be decided, made a recommendation, and submitted that recommendation for acceptance or rejection. The resolution merely asked the union members to decide whether their contractual rights should be waived. The Board has held that a union agent's inquiry

6/ The Joint Adjustment Board, a body consisting of an equal number of representatives of the Union and of the Employer Association, is established by the collective-bargaining agreement for the purpose of resolving grievances arising out of the interpretation or enforcement of the contract.

of neutral employees as to whether they would leave the job if requested by the union, so as to put pressure on the primary employer, was not inducement and encouragement within the meaning of Section 8(b)(4)(i)(B) of the Act.[7] The resolution here is even less interpretable as a "request or suggestion" that the union members refuse to perform services as there is no suggestion in the resolution that the contract would be enforced by proscribed economic action.

The Administrative Law Judge also found that Pasquinucci's statement to Carrier representatives on November 13, 1973, and Stack's statement to Contardi on July 19, 1974, both to the effect that moduline units would not be allowed into New York City, constituted violations of Section 8(b)(4)(ii)(B). We cannot adopt those findings. The statements were no more than reiteration of Respondent's position that it would not relinquish its rights under the collective-bargaining agreement. There is no suggestion that Respondnet would attempt to enforce the agreement by means other than those provided by the agreement. Consequently, we find that these statements do not constitute "threats, coercion or restraint" within the meaning of Section 8(b)(4)(ii)(B), and that Respondent's efforts to enforce its collective-bargaining agreement did not violate Section 8(e).[8]

With regard to the filing of the grievance against General Sheet Metal in November 1974, our decision in Associated General Contractors, supra, requires

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7/ Local 139, International Union of Operating Engineers, AFL--CIO, (Fox Valley Construction Material Suppliers Assn., Inc.) 182 NLRB 72 (1970).

8/ The Respondent contends that in any event these statements do not violate Sec. 8(b)(4)(ii)(B) as they are directed to the primary party to the dispute. For the reasons discussed infra, we find it unnecessary to reach the primary-secondary employer issues inasmuch as we find the Respondent has not engaged in coercive tactics proscribed by the Act.

a finding that Respondent did not violate Section 8(b)(4)(B) [9] and that the contract as so applied did not violate Section 8(e).[10] By instituting the grievance proceeding against General Sheet Metal, the Respondent merely "sought to enforce certain provisions of [its] bargaining agreement against a party to that agreement through peaceful means provided by the agreement and by no other means."[11] As the Board stated in Associated General Contractors at 700:

> [A] contractual agreement, such as we have before us, for compensation of a breach of contract determined by contractually fair procedures is a reasonable and peaceful method of resolving a dispute. Consequently, we find the Union's use of its contract in its dispute with Ohland did not constitute statutorily proscribed threats, coercion, or restraint.

As to the allegation that in violation of Section 8(b)(4)(i)(B) Respondent attempted to enforce its rights under the collective-bargaining agreements by inducing employees to refuse to perform work involving the Van Etten Drug Treatment

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9/ The Administrative Law Judge found that the institution of the grievance proceeding constituted a violation of Sec. 8(b)(4)(B), following the reasoning of the Ninth Circuit Court of Appeals in Associated General Contractors of California, Inc., v. N.L.R.B., 514 F.2d 433 (C.A. 9, 1975). With all due respect to that court, we adhere to our decision in Associated General Contractors, 207 NLRB 698. The Administrative Law Judge also relies on Connell Construction Co., Inc., v. Plumbers & Steamfitters, Local 100, 421 U.S. 616 (June 2, 1975). That case is inapposite, inasmuch as it involved economic activity by a union to force a general contractor, whose employees it did not represent, to enter into a no-subcontracting agreement.

10/ The Administrative Law Judge found that the contract as written violated Sec. 8(e). No such violation was alleged. Moreover, we see no basis herein for making such a finding. We also disavow the Administrative Law Judge's discussion of purported violations of Sec. 8(e) based on events occurring more than 6 months prior to the filing of the unfair labor practice charges. Pursuant to Sec. 10(b) of the Act, these facts were not before the Administrative Law Judge for consideration as violations of the Act.

11/ Associated General Contractors of Calif., 207 NLRB 688, 699.

Center project, we conclude that the evidence is insufficient to sustain this contention. There is no direct evidence that union members employed by Three Boro were encouraged or induced by Respondent to refuse to perform services. Pasquinucci's response "That's so" to Contardi's query "I hear you have refused to let them sketch the job" was ambiguous, and cannot be interpreted as an admission that Respondent encouraged its members to refuse to work, since throughout this prolonged dispute Respondent has consistently relied on its contractual rights and remedies. Further, there is no evidence that Pasquinucci or any other agent of Respondent communicated to Johansmeyer, the employee who erased the sketches at that job, that he should engage in such conduct or any other conduct proscribed by Section 8(b)(4)(B).

The record also is devoid of evidence that Johansmeyer was an agent of the Respondent. It is well established that a union is not liable for the acts of its members in the absence of a principal-agent relationship. A union member's refusal to work, even though stemming from the union's position in a dispute with the employer, does not constitute a violation of Section 8(b)(4)(B) in the absence of evidence that the union is legally responsible for his conduct. 12/

As in Associated General Contractors and Kimstock Division, having found that Respondent has not resorted to the coercive tactics proscribed by the Act, we find it unnecessary to reach the secondary-primary employer and work preservation issues on which the Administrative Law Judge passed.

12/ International Brotherhood of Electrical Workers, Local No. 43, AFL--CIO (Executone of Syracuse, Inc.), 172 NLRB 621 (1968). See also Local Union No. 3, International Brotherhood of Electrical Workers, AFL--CIO (Forest Electric Corp.), 205 NLRB 1102 (1973).

In view of the foregoing, we shall dismiss the complaint in its entirety.

ORDER

It is hereby ordered that the complaint, as amended, be dismissed.

Dated, Washington, D.C.

Betty Southard Murphy, Chairman

John H. Fanning, Member

John A. Penello, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 28, AFL-CIO

and

CASE NO. 2-CC-1296

CARRIER AIR CONDITIONING COMPANY, A DIVISION OF CARRIER CORPORATION

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 28, AFL-CIO

and

CASE NO. 2-CE-66

CARRIER AIR CONDITIONING COMPANY, A DIVISION OF CARRIER CORPORATION

and

THREE BORO SHEET METAL AND VENTILATING CO., INC.
Party to the Contract

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

It having been charged before the National Labor Relations Board, herein called the Board, in Cases Nos. 2-CC-1296 and 2-CE-66 by Carrier Air Conditioning Company, a division of Carrier Corporation, herein called Carrier, that Sheet Metal Worker International Association, Local 28, AFL-CIO herein called Local 28, has engaged in, and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act; and having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay:

IT HEREBY IS ORDERED, pursuant to Section 102.33 of the Board's Rules and Regulations - Series 8, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, Section 102.15, hereby issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1(a) The Charge in Case No. 2-CC-1296 was filed by Carrier on October 25, 1973, and served by registered mail upon Local 28 on or about October 26, 1973.

(b) The Charge in Case No. 2-CE-66 was filed by Carrier on December 27, 1973, and served by registered mail upon Local 28, on or about December 28, 1973.

2(a) Carrier is, and has been at all times material herein, a corporation duly organized under and existing by virtue of, the laws of the State of Delaware.

(b) At all times material herein, Carrier has maintained an office and place of business in Syracuse, New York and various other places of business in the United States, including Texas, where it is, and has been at all times material herein, engaged in the manufacture, sale and distribution of air conditioning equipment and related products.

(c) During the past year, which period is representative of its annual operations generally, Carrier in the course and conduct of its business operations, manufactured, sold and distributed at its places of business, products valued in excess of $5,000,000 of which products valued in excess of $50,000 were shipped from said places of business in interstate commerce directly to states of the United States other than the states in which it is located.

3(a) Three Boro Sheet Metal, herein called Three Boro is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein, Three Boro has maintained an office and place of business at 11 Wyeth Street, Brooklyn, New York where it is, and has

been at all times material herein,continuously engaged in providing sheet metal contracting services and related services.

4(a) Acme Climate Control, herein called Acme is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein, Acme has maintained an office and place of business at 49 Purchase Street, Rye, New York where it is, and has been at all times material herein continuously engaged in providing heating, air conditioning and ventilating contracting services and related services.

5(a) Orman Contracting, herein called Orman is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein, Orman has maintained an office and place of business at 739 Main Street, New Rochelle, New York, where it is, and has been at all times material herein,continuously engaged in providing general contracting services and related services.

6(a) Isadore & Zachary Rosenfield, is and has been at all times material herein a partnership doing business in New York.

(b) At all times material herein Isadore & Zachary Rosenfield have maintained an office and place of business at 50 West 40th Street, New York, New York where it is engaged in providing architecutural and related services.

7(a) Albert Einstein College of Medicine is, and has been, at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York .

(b) The Health and Hospital Corporation of the City of New York is, and has been at all times material herein, a govermental agency established and

maintained by the City of New York .

(c) The Van Etten Drug Treatment Program is, and has been at all times material herein, a federally funded program designated for the treatment for drug patients.

(d) At all times material herein Albert Einstein College of Medicine, The Health and Hospital Corporation of the City of New York and the Van Etten Drug Treatment Program are, jointly, the owners of a facility called the Van Etten Drug Treatment Center.

(c) At all times material herein the aforementioned persons have been engaged in the reconstruction of the Van Etten Drug Treatment Center sometimes referred to herein as the job site located in the Bronx, New York.

8. Carrier is, and has been at all times material herein, an employer engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(1),(2),(6) and (7), 8(b)(4) and 8(e) of the Act.

9. Three Boro and Acme are, and have been at all times material herein, persons and employers engaged in industries affecting commerce within the meaning of Sections 2(1),(2),(6) and (7), 8(b)(4) and 8(e) of the Act.

10. Local 2? is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

11. The persons named above in paragraph 7 have contracted with Isadore & Zachary Rosenfield for the planning and designing of the aforesaid facility at the job site and said firm designated the reconstruction of the Van Etten Drug Treatment Center.

12. At all times material herein Orman has been engaged by the persons named above in paragraph 7 to perform general contracting services at the job site.

13. Orman has contracted with Acme to perform heating, ventilating and air conditioning services at the job site.

14. Acme has subcontracted to Three Boro certain work at the job site including, inter alia, the work of installing certain prefabricated air conditioning units, herein called the moduline units. Acme however has not, by its contract with Three Boro, specified, designated or assigned to Three Boro any work in relation to the fabrication of the aforesaid moduline units.

15. In compliance with specifications made and determined by the architects, Isadore & Zachare Rosenfield, Acme purchased moduline units for installation at the job site from Carrier.

16. The aforesaid moduline units, including attached plenums housing the units, are prefabricated air conditioning units manufactured by Carrier at its plant located in Tyler, Texas. The moduline units require no addition of plenum fabrication once manufactured by Carrier at its Texas plant.

17(a) At all times material herein, Three Boro and Local 28 have maintained in force and effect a collective bargaining agreement.

(b) The aforesaid collective bargaining agreement between Local 28 and Three Boro, pursuant to Articles 4(b) and 16 requires, in substance, that the work of fabricating plenums be performed only by sheet metal workers represented by Local 28.

(c) At all times material herein Local 28 has claimed, by virtue of its agreement with Three Boro, that the work of fabricating the plenums which house the moduline units should be performed by Three Boro's employees who are members of or represented Local 28.

(d) By the said agreement described above in subparagraph (b), Three Boro has agreed to cease and refrain from handling, or otherwise dealing in the products of other employers, and has agreed to cease and refrain from doing business

with other persons.

18. In or about May 1973, Local 28, at a membership meeting, adopted a resolution which in substance stated that Local 28 members would oppose the installation of the moduline units, including attached plenums housing the units, manufactured by Carrier in the New York area unless Local 28 members fabricated the plenums housing the moduline units.

19. In or about October 1973, an employee of Three Boro, who is a member of Local 28, refused to perform certain sketching work prepatory to and necessary for the installation of the Carrier moduline units, including attached plenums housing the units,at the job site.

20. On or about October 23, 1973 and November 16, 1973, Local 28, by Dan Pasquanucci, its president, informed Carrier's representative that Three Boro's employee, a member of Local 28, would not be permitted to make the sketches for the Carrier moduline units and that Local 28 was not going to allow the Carrier mdouline units to come into New York because Local 23 members were not fabricating the plenums that housed the units.

21. Three Boro notified Acme and others, in or about the middle of October and the early part of November 1973, of its intention to refuse to install the Carrier moduline units at the job site because of its contract with Local 28.

22. As a result of Three Boro's notifications described above in subparagraph 21, Acme on or about December 14, 1973 refused to accept a partial shipment of the moduline units by Carrier.

23. By the acts and conduct described above in subparagraphs 18, 19 and 20 Local 28 has reaffired and continues to maintain and give effect to its agreement with Three Boro described above in paragaph 17.

24. By the acts and conduct described above in subparagtaph 21, Three Boro

has reaffirmed and continues to maintain and give effect to its agreement with Local 28 described above in subparagraph 17.

25. Local 28 engaged in the conduct described above in paragraphs 18, 19 and 20 with an object to force and require Three Boro, Acme and other persons to cease using, or otherwise dealing in the products of Carrier and to cease doing business with Carrier.

26. By the acts described above in paragraphs 18, 19 and 20 and by each of said acts, for the objects described above in paragraph 25, Local 28 engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(ii)(B) and Section 2(6) and (7) of the Act.

27. By the acts described above in paragraphs 18, 19 and 20 and by each of said acts, Local 28 engaged in and is engaging in unfair labor practices affecting commerce with the meaning of Section 8(e) and Section 2(6) and (7) of the Act.

The acts of Local 28 described above in paragraphs 18, 19 and 20 occurring in connection with the operations of Carrier described above in paragraph 2, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 15th day of April 1974, at 11:00 a.m., at 26 Federal Plaza, 36th Floor, in the City and State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear in person, or otherwise and give testimony.

You are further notified, that, pursuant to Sections 102.20 and 102.21

of the Board's Rules and Regulations, the Respondent shall file with the Regional Director, Region 2, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Consolidated Complaint within ten (10) days from the service thereof, and that unless it does so all of the allegations in the Consolidated Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediatelyy upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Form NLRB-4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases is attached.

Dated at New York, New York this 28th day of February 1974.

Sidney Danielson

Sidney Danielson, Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, New York 10007

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 28, AFL-CIO

and

CASE NO. 2-CC-1296

CARRIER AIR CONDITIONING COMPANY, A DIVISION OF CARRIER CORPORATION

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 28, AFL-CIO

and

CASE NO. 2-CE-66

CARRIER AIR CONDITIONING COMPANY A DIVISION OF CARRIER CORPORATION.

and

THREE BORO SHEET METAL AND VENTILATING CO., INC.

Party to the Contract

NOTICE OF INTENTION TO AMEND THE COMPLAINT

PLEASE TAKE NOTICE that the the outset of the hearing in this matter, Counsel for the General Counsel will move to amend the Complaint in the following manner:

1. Paragraph 17 of the Complaint will be amended to read:

17(a) At all times material herein, Three Boro and Local 28 have maintained in force and effect a collective bargaining agreement.

(b) The most recent collective bargaining agreement between Three Boro and Local 28 was executed on July 6, 1972 for a term to expire on June 30, 1975.

(c) Pursuant to Section 18, of the aforesaid agreement, Three Boro agreed that if Local 28 should at any time thereafter enter into an agreement with the Sheet Metal and Air Conditioning Contractors National Association, New York Chapter Inc., (herein called the Association), an employer association which bargains with Local 28 on behalf of its employer-members, that the terms and conditions of such an agreement would be incorporated by reference into the agreement described above in subparagraph (b) between Three Boro and Local 28.

(d) On or about August 31, 1972, the Association and Local 28 entered into a collective bargaining agreement covering certain employees employed by the Association's employer-members, which agreement is for a term to expire on June 30, 1975.

(e) The collective bargaining agreement between the Association and Local 28, as described above in subparagraph (d) and incorporated by reference into Three Boro's agreement with Local 28, contains provisions at Article 1, Section 3 and Rule II entitled "Memorandum Containing No Subcontracting Clause," which purport to require, in substance, that the work of fabricating plenums be performed only by employees who are represented by Local 28.

(f) At all times material herein, Local 28 has claimed and continues to claim that by virtue of its agreements with Three Boro and the Association, that the work of fabricating plenums on moduline units should be performed by employees who are members of or represented by Local 28 and who are employed by Three Boro or any other employer having a collective bargaining agreement with Local 28.

(g) By the agreements described above in subparagraphs (a) through (e) Three Boro and other persons have agreed to cease and refrain from handling, or otherwise dealing in the products of other employers or persons and has agreed

to cease and refrain from doing business with other employers or persons.

2. Paragraph 20 of the Complaint will be amended to read:

20(a) On or about October 23, 1973 and November 16, 1973, Local 28, by Dan Pasquannuci, its president and agent, informed Carrier's representative that Three Boro's employees, members of Local 28, would not be permitted to make the sketches for the Carrier moduline units.

(b) On the dates set forth in subparagraph (a) and also on or about July 23, 1974 Local 28 by Dan Pasquannuci and Edward Stack, its current president and agent, respectively informed Carrier's representative that Local 28 was not going to permit Carrier's moduline units to be utilized or installed in New York because employees represented by Local 28 were not fabricating the plenums on the units.

3. Paragraph 23 of the Complaint will be amended to read:

23. By the acts and conduct described above in paragraphs 18, 19 and 20, Local 28 has reaffirmed and continues to maintain and give effect to its agreements described above in paragraph 17.

4. Paragraph 26 of the Complaint will be amended to read:

26. By the acts and conduct described above in paragraphs 18, 19 and 20 and by each of said acts for the objects described above in paragraph 25, Local 28 induced and encouraged individuals employed by Three Boro to refuse to perform services for said Employers and has threatened, coerced and restrained Three Boro, Acme and other persons and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i)(ii)(B) and Section 2(6) and (7) of the Act.

5. Paragraph 27 of the Complaint will be amended to read:

27. By the acts described above in paragraphs 18, 19 and 20 and by each of said acts, in conjunction with the agreements described above in para-

graph 17, Local 28 engaged in and is engaging in unfair labor practices effecting commerce within the meaning of Section 8(e) and Section 2(6) and (7) of the Act.

6. There will be added to the Complaint a paragraph 28 to read:

28. The acts of Local 28 described above in paragraphs 18, 19 and 20 occurring in connection with the operations of Carrier described above in paragraph 2, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

Dated at New York, New York

this 10th day of December 1974

Raymond P. Green
Counsel for the General Counsel

SECOND REGION

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 28, AFL-CIO
and
CARRIER AIR CONDITIONING COMPANY, A DIVISION OF CARRIER CORPORATION
and
THREE BORO SHEET METAL AND VENTILATING CO., INC.
Party to the Contract.

Case No. 2-CC-1296
Case No. 2-CE-66

ANSWER

Respondent, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 28, AFL-CIO, by its attorney, SOL BOGEN, answering the Consolidated Complaint* herein, alleges:

FIRST: Denies each and every allegation contained in the paragraphs of the Complaint designated: "17(b)", "17(c)", "18", "20", "23", "24", "25", "26" and "27".

SECOND: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the Complaint designated: "3(a)", "4(a)", "4(b)", "5(a)", "5(b)", "6(a)", "6(b)", "7(a)", "7(c)", "7(d)", "7(e)", "9", "11", "12", "13", "14", "15", "16", "17(d)", "19", "21" and "22".

*Complaint consolidated as per Order of Regional Director, dated February 28, 1974.

AS AND FOR A SEPARATE AND COMPLETE DEFENSE

THIRD: The issues raised in the Complaint are, and have been moot by reason that (a) the job and work that are the subject matter of the Complaint have long since been completed without incident or activity that may be considered violative of the Act, (b) the acts in which it is alleged Local 28 engaged in October and November 1973 (which are expressly denied) were isolated and remote, and have been entirely dissipated at this time and (c) the alleged agreement by and between Local 28 and "Three Boro" and the several provisions thereof cited in the Complaint have been superceded, are null and void, and have not been maintained or given effect.

WHEREFORE, Respondent respectfully requests that the Complaint herein be dismissed in its entirety.

Dated: New York, N. Y.
November 12, 1974.

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 28

By: SOL BOGEN, Attorney

SOL BOGEN
One Penn Plaza
New York, N. Y. 10001
(212) 736-7570

GENERAL COUNSEL'S EXHIBIT 2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 28, AFL-CIO

and

Cases Nos. 2-CC-1296
2-CE-66

CARRIER AIR CONDITIONING COMPANY, A DIVISION OF CARRIER CORPORATION

and

THREE BORO SHEET METAL AND VENTILATING CO., INC.

Party to the Contract

and

SHEET METAL AND AIR CONDITIONING CONTRACTORS NATIONAL ASSOCIATION, NEW YORK CHAPTER, INC.

Intervenor

STIPULATION

It is hereby stipulated and agreed by and among Sheet Metal Workers International Association, Local 28, AFL-CIO, the Respondent, herein called Local 28; Carrier Air Conditioning Company, A Division of Carrier Corporation, the Charging Party, herein called Carrier; Sheet Metal and Air Conditioning Contractors National Association, New York Chapter, Inc., the Intervenor, herein called the Association, and Counsel for the General Counsel of the National Labor Relations Board, all parties to these proceedings, as follows:

1. Carrier is, and has been at all times material herein, a Delaware corporation whose principal office and place of business is in Syracuse, New York. Carrier has manufacturing facilities at other locations, including Tyler, Texas, and sales offices at various locations, including New York, New York. Carrier is engaged in the manufacture, sale and distribution of air conditioning equipment and related products.

2. Three Boro Sheet Metal and Ventilating Co., Inc., is, and has been at all times material herein, a New York corporation whose principal place of business is at 11 Wyeth Street, Brooklyn, New York, where it is engaged in providing sheet metal contracting services and related services.

3. Acme Climate Control is, and has been at all times material herein, a New York corporation whose principal office and place of business is at 49 Purchase Street, Rye, New York, where it is engaged in providing heating, air conditioning and ventilating contracting services and related services.

4. Ormar Contracting is, and has been at all times material herein, a New York corporation whose principal office and place of busine is at 739 Main Street, New Rochelle, New York, where it is engaged in providing general contracting services and related services.

5. Isadore & Zachary Rosenfield is and has been at all times material herein a partnership whose principal office and place of business is at 58 West 40th Street, New York, New York, where it is engaged in providing architectural and related services.

6. Albert Einstein College of Medicine of Yeshiva University is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

7. The Health and Hospital Corporation of the City of New York is, and has been at all times material herein, a governmental agency established and maintained by the City of New York.

8. The Van Etten Drug Treatment Program is, and has been at all times material herein, a federally funded program designated for the treatment of drug patients.

9. At all times material herein Albert Einstein College of Medicine, The Health and Hospital Corporation of the City of New York and the Van Etten Drug Treatment Program are, jointly, the owners of a facility called the Van Etten Drug Treatment Center.

10. Carrier manufactures a product which it designates as the Carrier 37P Moduline Weathermaster air terminal unit and which is more fully described in Appendix A attached hereto and made a part hereof. Carrier also manufactures a product which it designates as the Carrier 37A Dual Moduline unit and which is more fully described in Appendix B attached hereto and made a part hereof.

11. Carrier is the owner of the following patents granted by the United States Patent Office, copies of which are attached hereto and made a part hereof.

U. S. Patent Number	Appendix
3,082,676	C-1
3,143,292	C-2
3,383,999	C-3
3,554,112	C-4
3,554,111	C-5
3,591,076	C-6
3,677,164	C-7
3,703,140	C-8
3,730,071	C-9
3,167,253	C-10
3,225,788	C-11
3,653,588	C-12
3,796,367	C-13
3,117,723	C-14
3,595,475	C-15
3,727,835	C-16
3,790,075	C-17
3,606,224	C-18
3,657,901	C-19
3,700,198	C-20
3,807,023	C-21

3,824,800	C-22
3,434,409	C-23
3,623,543	C-24
3,844,868	C-25

12. Local 28 and the Association, and those Employers who subscribed thereto, were parties to a collective bargaining agreement effective August 4, 1969, and terminating June 30, 1972, a copy of which is attached hereto as Appendix D and made a part hereof.

13. Local 28 and the Association, and those Employers who subscribed thereto, are parties to a collective bargaining agreement effective August 31, 1972, and terminating June 30, 1975, a copy of which is attached hereto as Appendix E and made a part hereof.

14. Three Boro Sheet Metal and Ventilating Co., Inc., executed a Memorandum of Understanding with Local 28 on July 6, 1972, whereby the parties thereto adopted the agreement referred to in paragraph 13 of this stipulation with certain modifications set out in said Memorandum of Understanding, which is attached hereto as Appendix F and made a part hereof.

15. On or about October 31, 1967, in connection with the settlement of a dispute arising out of the installation of Carrier Moduline Weathermaster air terminal units in the Police Headquarters Building then under construction in New York City, Local 28, Carrier,

the Association, and others executed a memorandum addressed to Hon. Eugene Hult, Commissioner, Department of Public Works, New York, New York, which is attached hereto as Appendix G and made a part hereof.

16. On or about June 16, 1970, George T. Baum, Assistant to the Chairman of Carrier, sent a letter to Edward F. Carlough, then General President, Sheet Metal Workers International Association, 1000 Connecticut Avenue, N. W., Washington, D. C., regarding installation of Carrier Moduline units in New York, New York, which is attached hereto as Appendix H and made a part hereof.

17. About mid-October, 1972, ~~an ad hoc Sheet Metal Industry~~ a Research and Review Committee, that has been appointed by ~~then President of~~ Local 28 ~~Dan Pasquinucci~~, whose members were Richard Berman, Howard Bretz and William Connolly, submitted an undated Report to Local 28 Executive Board evaluating the Carrier Moduline Variable Volume Unit. A copy of said report is attached hereto as Appendix I and made a part hereof. Larry Sturgis, Executive Director of the Sheet Metal Industry Council of New York, participated at various meetings ~~served as secretary~~ of this Committee.

18. Thereafter and on or about October 16, 1972, Larry Sturgis transmitted a proposal from the Executive Board of Local 28 to Carrier District Sales Manager August Contardi under which Local 28 would accept Carrier Moduline units in New York City. This proposal was transmitted by Mr. Contardi to Carrier headquarters in Syracuse, New York, on or about October 16, 1972 by TWX, a copy of which is

attached hereto as Appendix J and made a part hereof. Subsequently, on or about October 18, 1972, Mr. Contardi transmitted by letter to Mr. Sturgis a counter proposal from Carrier to Local 28, a copy of which is attached hereto as Appendix K and made a part hereof.

19. On or about February 1, 1973, Larry Sturgis wrote a letter regarding variable volume systems to the Board of Trustees, Sheet Metal Industry Council of New York, a copy of which is attached hereto as Appendix L and made a part hereof. On or about March 26, 1973, Mr. Sturgis wrote another letter on the same subject to John J. Flannery P.E., President, SMACNA New York City Chapter, Inc., a copy of which is attached hereto as Appendix M and made a part hereof.

20. On or about April 1, 1973, Albert Einstein College of Medicine of Yeshiva University entered into an agreement with Zachary Rosenfield, of the firm Isadore and Zachary Rosenfield, for architectural services in connection with the remodeling and furnishing of wing "A" of the 1st floor of Van Etten Hospital to provide quarters for the Methadone Chest Disease Program. A copy of that agreement is attached hereto as Appendix N and made a part hereof.

21. Thereafter, on or about June 18, 1973, an invitation to bid on a construction project known as the Van Etten Drug Treatment Program, located at Albert Einstein College of Medicine, Bronx Municipal Hospital Center, Bronx, New York, was issued. Specifications for the project were prepared by Isadore and Zachary Rosenfield, Architects/Hospital Consultants, 58 West 40th Street, New York, New York, with the assistance

as consulting engineers of Hankins & Anderson, 2117 North Hamilton Street, Richmond, Virginia. A copy of the letter of agreement between Isadore and Zachary Rosenfield and Hankins & Anderson, dated May 3, 1973, is attached hereto as Appendix O and made a part hereof. A copy of relevant portions of the aforesaid specifications, including Division 15 - Mechanical, Section 15B - Heating, Ventilating and Air Conditioning, is attached hereto as Appendix P and made a part hereof.

22. On or about June 26, 1973, Albert Einstein College of Medicine of Yeshiva University entered into an agreement with the Ormar Building Corporation, 739 Main Street, New Rochelle, New York, to act as Construction Manager for the Van Etten Drug Treatment Program. A copy of that agreement is attached hereto as Appendix Q and made a part hereof.

23. On or about October 1, 1973, the Ormar Building Corporation entered into a subcontract with Acme Climate Control Corp., 49 Purchase Street, Rye, New York, to perform "Heating, Ventilating and Air Conditioning work for Van Etten Drug Treatment Program." A copy of that agreement is attached hereto as Appendix R and made a part hereof.

24. On or about August 10, 1973, Acme Climate Control Corp. issued purchase order No. 4937 to Carlton-Stuart Corp., Long Island City, New York, a distributor of Carrier, confirming an order for, inter alia, 92 "Variable Volume Terminals and Sleeves w/access'/," which were Carrier 37A Moduline units, to be shipped to Van Etten

Drug Treatment Center. A copy of that purchase order is attached hereto as Appendix S and made a part hereof.

25. On or about December 6, 1973, Acme Climate Control Corp. entered into a subcontract with Three Boro Sheet Metal and Ventilating Co., 11 Wythe Street, Brooklyn, New York, to perform the installation work at the Van Etten Drug Treatment Center of the Carrier 37A Moduline Units referred to in paragraph 24. A copy of that agreement is attached hereto as Appendix T and made a part hereof.

26. On or about March 12, 1974, Carrier District Sales Manager A. C. Contardi transmitted a letter to Local 28, Attention: Dan Pasquinucci, President, enclosing a draft memorandum of agreement regarding acceptance and installation of Carrier Dual Moduline Units in New York City, a copy of which is attached hereto as Appendix U and made a part hereof.

27. On or about May 10, 1974, a meeting of an ad hoc Sheet Metal ~~Industry~~ Research and Review Committee, ~~appointed by then President of Local 28 Dan Pasquinucci,~~ met to evaluate the Carrier Moduline unit. Members of the Committee were Richard Berman, Howard Bretz and Frank Rueckert. Robert S. Schluter, representing the Sheet Metal Industry Promotion Fund of New York City acted as secretary and Carrier District Sales Manager A. C. Contardi also attended. A copy of minutes of this meeting prepared by Mr. Schluter are attached hereto as Appendix V and made a part hereof and a copy of minutes prepared by Mr. Contardi

are attached hereto as Appendix W and made a part hereof.

28. On or about April 26, 1973, the Joint Adjustment Board of Local 28 and the Association held a meeting at which one item on the agenda was "Variable Air Systems." A copy of the portions of minutes of that meeting pertaining to variable air systems is attached hereto as Appendix W-1 and made a part hereof.

29. Local 28 is not a party to a collective bargaining agreement with any of the parties referred to in paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 21, 24, 30 and 31 of this stipulation.

30. At some time prior to February, 1974, Columbia Presbyterian Hospital entered into an agreement or agreements with Meyer, Strong & Jones, Engineers and Rogers, Butler & Burgun, Architects, to perform professional services in connection with a construction project known as Babies Hospital Addition, 9th through 12th floors. A copy of relevant portions of the specifications for said project, to wit Specification Section 15A-4, paragraph 12, "Moduline Units," prepared by Meyer, Strong & Jones and Rogers, Butler & Burgun are attached hereto as Appendix X and made a part hereof.

31. About January, 1974, H. Cohan Contracting Corporation entered into an agreement, which is attached hereto as Appendix X-1 and made a part hereof, with Columbia Presbyterian Hospital to perform the mechanical work on the Babies Hospital Addition in accordance with specifications prepared as set out in paragraph 30, including a provision for the

furnishing and installation of Carrier 37AF Moduline Mark 5TM Weathermaster Terminals with self-contained controls. The drawings supplied to H. Cohan Contracting Corporation for installation of the aforesaid Carrier units, as certified by Meyer, Strong & Jones, are attached hereto as Appendix X-2 and made a part hereof.

32. On or about May 29, 1974, H. Cohan Contracting Corporation confirmed a purchase order with Carrier for delivery by Carrier to Babies Hospital Addition of, inter alia, Carrier 37AF Moduline variable volume ceiling diffusers in accordance with the plans and specifications referred to in paragraph 28 above. A copy of this purchase order is attached hereto as Appendix Y and made a part hereof.

Revised page 10

-10-

OK 30. At some time prior to February, 1974, Columbia Presbyterian Hospital entered into an agreement or agreements with Meyer, Strong & Jones, Engineers and Rogers, Butler & Burgun, Architects, to perform professional services in connection with a construction project known as Babies Hospital Addition, 9th through 12th floors. A copy of relevant portions of the specifications for said project, to wit Specification Section 15A-4, paragraph 12, "Moduline Units," prepared by Meyer, Strong & Jones and Rogers, Butler & Burgun are attached hereto as Appendix X and made a part hereof.

31. About January, 1974, H. Cohan Contracting Corporation entered

into an agreement with Columbia Presbyterian Hospital to perform the mechanical work on the Babies Hospital Addition in accordance with specifications prepared as set out in paragraph 30, including a provision for the furnishing and installation of Carrier 37AF Moduline Mark 5TM Weathermaster Terminals with self-contained controls (Appendix X-1).

32. On or about May 29, 1974, H. Cohan Contracting Corporation confirmed a purchase order with Carrier for delivery by Carrier to Babies Hospital Addition of, inter alia, Carrier 37AF Moduline variable volume ceiling diffusers in accordance with the plans and specifications referred to in paragraph 28 above. A copy of this purchase order is attached hereto as Appendix Y and made a part hereof.

33. General Sheet Metal, Inc., is a member of the Association and, pursuant to its membership therein, is bound by the collective bargaining agreement between Local 28 and the Association referred to in paragraph 13 of this stipulation.

34. On or about June 11, 1974, H. Cohan Contracting Corporation entered into an agreement with General Sheet Metal, Inc., 434 E. 165th Street, Bronx, New York, to perform certain sheet metal work at the Babies Hospital Addition. A copy of this agreement is attached hereto as Appendix Z and made a part hereof.

35. Thereafter on or about November 7, 1974, Local 28 filed

charges against General Sheet Metal, Inc., alleging a violation of the collective bargaining agreement between Local 28 and the Association, to which General Sheet Metal, Inc., was a party. A copy of said charges are attached hereto as Appendix AA and made a part hereof.

36. This stipulation is made without prejudice to any objection any party may have as to the materiality or relevancy of any facts stated herein or in the Appendices attached hereto and made a part hereof.

APPENDIX C

M O D U L I N E P A T E N T S

I Unit Including Components Thereof

United States Patent Number	Issued
3,082,676	3/26/63

This patent covers the basic concept of an inflatable bladder having a lower portion cooperating with a slot edge of a cut-off plate to regulate the quantity of air discharged into a space.

3,143,292	8/4/64

This patent relates to the utilization of a pressure regulator to vary pressure in an inflatable bellows in response to variations in main duct pressure.

3,383,999	5/21/68

This patent covers the particular construction of the terminal wherein horizontal and longitudinal ribs are provided to increase rigidity.

3,554,112	1/12/71

This patent discloses the construction of the 37A center diffuser section wherein the bladders are mounted on the concave portion of the diffuser walls. The diffuser walls are convex at their lower ends for better sound dissipation.

3,554,111	1/12/71

This patent covers the relationship between the radius of the side diffuser and the width of the discharge opening. The ratio of the foregoing is highly critical in obtaining proper air flow.

3,591,076	7/6/71

This patent relates to the removable feature of the center diffuser section, including the control section, of the terminal.

3,677,164	7/18/72

This patent relates to the construction of the terminal and in particular to the shape of the cut-off plates and the cooperation between such plates and the inflatable bladder.

3,703,140	11/21/72

This patent covers the 5° off-set cut-off plate.

I Unit Including Components Thereof -cont'd- Pg.2

United States Patent Number	Issued
3,730,071	5/1/73

This patent covers the spacer members used to insure that the width of the discharge opening is maintained uniform for its entire length.

II Controls

A. Pressure Regulator

3,167,253	1/26/65

This patent relates to the construction of a pressure regulator so that it is responsive to duct pressure to maintain a constant volume of discharge air and to a thermostat for varying the quantity of air discharged in response to actual room requirements.

3,225,788	12/28/65

This patent relates to the pressure regulator employed to vary the inflation of the bellows in response to changes in duct pressure.

3,653,588	4/4/72

The patent discloses the utilization of a fixed orifice in the pressure regulator to pass a minimum quantity of air through the regulator.

3,796,367	3/12/74

This patent covers the use of a calibration screw which may be factory adjusted to insure that the pressure regulator is accurately calibrated. The calibration screw must not be readjusted in the field.

B. Thermostat

3,117,723	1/14/64

This patent relates to the utilization of a bleed-type thermostat to regulate the bleeding of air from a constant volume regulator to provide a variable volume of air to the area in accordance with actual requirements.

B. Thermostat -cont'd- Pg.3

United States Patent Number	Issued
3,595,475	7/27/71

This patent relates to the thermostat and in particular to the perforated bimetal employed as the actuating member thereof.

3,727,835	4/17/73

This patent covers a stop member employed in the 37 series thermostat to prevent the bimetal from overtraveling and thereby deforming parts of the device.

3,790,075	2/15/74

This patent covers a spring used to maintain contact between the adjustment lever and calibration member of the thermostat to prevent the lever from self-rotating.

III Accessories

3,606,224	9/20/71

This patent relates to a mounting bracket employed to connect the unit to a tee-bar wherein the weight of the unit is directed onto the top of the upstanding leg of the tee.

3,657,901	4/25/72

This patent covers the configuration of the return air unit.

3,700,198	10/24/72

This patent relates to a mounting bracket which may be employed to axially align components of an air conditioning system.

3,807,023	4/30/74

This patent relates to a tool particularly suitable for use in removing the center diffuser section of the terminal.

3,824,800	7/23/74

The patent discloses the use of a bimetallic valve as a warm-up switch.

IV Systems Using Moduline Terminals Pg.4

United States Patent Number	Issued
3,434,409	3/25/69

This patent relates to an air conditioning system in which 37 series terminals may be effectively used.

3,623,543	11/30/71

This patent relates to a system employing a 37 series terminal wherein the temperature of air supplied to peripheral units is regulated in accordance with the temperature of a preselected space.

V Pending Applications

Serial Number 311,076 (Status - allowed)

This application covers the 37AD terminal.

Serial Number 395,205 (Status - allowed)

This application covers the mounting arrangement used in the AT & T job - particularly suitable where the units are hung from the actual ceiling.

Serial Number 447,603 (Status - amended)

This patent covers the center diffuser section which may be interchangeably employed in a supply or return air mode.

APPENDIX D

STANDARD FORM
OF UNION AGREEMENT

SHEET METAL CONTRACTING DIVISION

OF THE

CONSTRUCTION INDUSTRY

BETWEEN

LOCAL UNION NO. 28 of SHEET METAL WORKERS INTERNATIONAL ASSOCIATION of GREATER NEW YORK,

AND

SHEET METAL CONTRACTORS ASSOCIATION OF NEW YORK CITY, INC.

and those Employers who subscribe thereto

WITH

Addendum and Regulations

Effective: August 4, 1969 Terminates: June 30, 1972

STANDARD FORM
OF UNION AGREEMENT

SHEET METAL CONTRACTING DIVISION

OF THE

CONSTRUCTION INDUSTRY

THIS AGREEMENT, entered into as of this 4th day of August, 1969, by and between SHEET METAL CONTRACTORS ASSOCIATION OF NEW YORK CITY, INC., hereinafter referred to as the "Employer" and LOCAL UNION NO. 28 OF SHEET METAL WORKERS INTERNATIONAL ASSOCIATION OF GREATER NEW YORK, hereinafter referred to as the "Union".

ARTICLE I

Section 1. This Agreement covers the rates of pay, rules and working conditions of all employees of the Employer engaged in the manufacture, fabrication, assembly, erection, installation, dismantling, reconditioning, adjustment, alteration, repairing, and servicing of all sheet metal work (including ferrous or non-ferrous sheet metal) of No. 10 U. S. gauge or its equivalent or lighter gauge, or any and all substitute materials used in lieu thereof (any question of jurisdiction of substitute material to be settled in accordance with the Joint Arbitration Plan between the Building Trades Employers' Association and the Unions of the Building Trades of the City of New York), including all shop and field sketches used in fabrication and erection (including those taken from original architectural and engineering drawings or sketches) and all

other work included in the jurisdictional claims of Sheet Metal Workers International Association.

Section 2. Testing and Balancing of all air-handling equipment and duct work contracted for prior to June 30, 1969, shall be done by a composite crew of one journeyman sheet metal worker and one tester. Testing and Balancing of all air-handling equipment and duct work on all work contracted for after June 30, 1969, shall be done only by journeymen sheet metal workers.

II. MEMORANDUM CONTAINING NO SUBCONTRACTING CLAUSE

For the preservation of the work opportunities of the Journeymen Sheet Metal Workers and Apprentice Sheet Metal Workers within the collective bargaining unit, each Employer within the collective bargaining unit shall not subcontract out any item or items of work described hereinbelow; except that each said Employer shall have the right to subcontract for the manufacture, fabrication or installation of such work with any other Employer within the collective bargaining unit:

1. Radiator enclosures except when manufactured and sold as a unit including heating element.

2. Functional Louvers.

3. Attentuation Boxes except for mechanical devices contained therein.

3a. Sound traps.

4. Dampers: All types of Dampers, including Automatic Dampers and Multi-Zone Dampers, Manual Control Dampers and Fire Control Dampers, except Patented Pressure Reducing Devices.

5. Skylights, Sheet Metal Sleeves, Pressure Reducing Boxes, Volume Control Boxes, Troffers (plenums), High Pressure Fittings and Gutters (excluding ½ Round Gutters).

6. Air handling units in excess of 30,000 C.F.M.'s.

7. All other work historically, traditionally and customarily performed by Journeymen Sheet Metal Workers and Apprentice Sheet Metal Workers within the collective bargaining unit in accordance with the collective bargaining agreement.

RULE XIII

Parties to the Agreement hereby agree to establish a Joint Adjustment Board with equal representation thereon, who shall hold regular or special meetings as circumstances may warrant, and to whom shall be referred all matters of controversy or dispute arising out of the operation of the agreement or affecting relations between the parties hereto which cannot be settled by the duly authorized representative of the Union and the Employer directly involved in accordance with provisions of the Agreement.

Within ten (10) days after the signing of this Agreement the parties hereto shall notify each other in writing of the names of their representatives on the Joint Adjustment Board. The designation of any representative may be revoked at any time at the pleasure of the Union or the Employer, as the case may be, and any vacancy caused by the death, resignation or revocation of the designation of any such representative shall be filled by the Union or the Employer, as the case may be, notice of any such new designation being given in writing to the other party.

The Joint Adjustment Board shall consist of twelve (12) members designated by the Employer and twelve (12) members designated by the Union.

If either the Employer or the Union is represented at any meeting by fewer members than the other, the total of the votes cast by either side shall not exceed the number of members present for the side having the smaller representation. A decision rendered by the Board shall be final and binding.

No member of a Joint Adjustment Board directly involved in a case before the Board shall sit in consideration of the case before the Board.

RULE XVIII

An employer having been charged with violating Article VII Section 1 of the Agreement, for paying to a journeyman sheet metal worker less than the prescribed rate of wages shall, on notice, appear before a meeting of the Joint Adjustment Board, called to consider the complaint and charges. Upon the submission of conclusive proof of said charge of violation, the Joint Adjustment Board shall find the Employer guilty, and order that, without undue delay, the Employer shall pay in cash to the journeyman sheet metal worker involved the difference between the prescribed wage rate and that tendered by the Employer and accepted by the Journeyman sheet metal workers.

A journeyman sheet metal worker violating this Agreement signed as of the 4th day of August, 1969, by accepting less than the rate of wages prescribed in Article VII Section 1 of this Agreement, shall, without undue delay, pay as liquidated damages into the Sick Dues Relief Fund of Local Union 28 the cash difference between the Agreement wage rate prescribed and that accepted by him from the convicted Employer, and be subject to such discipline exercised as provided in the Constitution and Ritual of the Sheet Metal Workers International Association.

An Employer tried and convicted for violation of any other provisions of the Agreement and rules or regulations shall have recorded against him the fact of such violation as a first offense, and be censured; and on the second offense he shall be penalized either in the manner prescribed above or in lieu thereof shall have a fine imposed that will be commensurate with the loss adjudged by the Joint Adjustment Board to have been sustained by journeyman sheet metal workers by reason of such violation.

APPENDIX E

STANDARD FORM
OF UNION AGREEMENT

SHEET METAL CONTRACTING DIVISION

OF THE

CONSTRUCTION INDUSTRY

BETWEEN

SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION
LOCAL UNION NO. 28

and

SHEET METAL AND AIR CONDITIONING
CONTRACTORS NATIONAL ASSOCIATION
NEW YORK CITY CHAPTER, INC.

and those Employers who subscribe thereto

WITH

Addendum and Regulations

Effective: August 31, 1972 Terminates: June 30, 1975

STANDARD FORM
OF UNION AGREEMENT

SHEET METAL CONTRACTING DIVISION

OF THE

CONSTRUCTION INDUSTRY

THIS AGREEMENT, entered into as of this 31st day of August, 1972, by and between **SHEET METAL AND AIR CONDITIONING CONTRACTORS NATIONAL ASSOCIATION, NEW YORK CITY CHAPTER, INC.**, hereinafter referred to as the "Employer" and **SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 28,** hereinafter referred to as the "Union".

ARTICLE I

SECTION 1. This agreement covers the rates of pay, rules and working conditions of all employees of the Employer engaged in the manufacture, fabrication, assembly, erection, installation, dismantling, reconditioning, adjustment, alteration, repairing, and servicing of all sheet metal work (including ferrous or non-ferrous sheet metal) of No. 10 U.S. gauge or its equivalent or lighter gauge, or any and all substitute materials used in lieu thereof (any question of jurisdiction of substitute material to be settled in accordance with the Joint Arbitration Plan between the Building Trades Employers' Associations and the Unions of the Building Trades of the City of New York), including all shop and field sketches used in fabrication and erection (including those taken from original architectural and engineering drawings or sketches) and all other work included in the jurisdictional claims of Sheet Metal Workers International Association.

SECTION 2. (a). Testing and balancing of all air-handling equipment and duct work contracted for after June 30, 1969, shall be performed only by journeyman sheet metal workers in the bargaining unit covered by this Agreement.

(b). Any drawings, floor layouts, fan data, or outlet sheets that are required by the Employer for testing and balancing shall be prepared by sheet metal journeymen or apprentices in the bargaining unit covered by this Agreement. Any existing plans, layouts, sepias, furnished by the owner, architect, engineer, or prepared by journeymen or apprentices for other purposes shall be used for testing and balancing. Any typing or duplicating may be done by office personnel. Any instrument or device and method of testing and balancing may be used if approved by the engineer or approving authority. The work shall be deemed completed when accepted by the engineer or approving authority.

SECTION 3. All internal linings for casings, plenums and ducts are, and shall remain the work of the sheet metal workers exclusively, which shall be performed only by journeyman and apprentice sheet metal workers in the bargaining unit covered by this Agreement. Internal linings for casings, plenums and ducts must be lined prior to erection.

SECTION 4. Supply casings shall be the work of and be performed only by journeyman and apprentice sheet metal workers in the bargaining unit covered by this Agreement in accordance with Sketch "A" annexed hereto.

SECTION 5. Supply air shafts shall be sheet metal and the work of and be performed only by journeyman and apprentice sheet metal workers in the bargaining unit covered by this Agreement.

ARTICLE II

SECTION 1. The Employer agrees that all the work described in ARTICLE I shall be performed only by journeyman or apprentice sheet metal workers in the bargaining unit covered by this Agreement.

ARTICLE X

SECTION 1. Grievances of the Employer or the Union, arising out of interpretation or enforcement of this Agreement, shall be settled between the Employer directly involved and the duly authorized representative of the Union, if possible. An employer may have the local Association present to act as his representative.

SECTION 2. Grievances not settled as provided in Section 1 of this Article may be appealed by either party to the Local Joint Adjustment Board in the area in which the work is performed and such Board shall meet promptly on a date mutually agreeable to the members of the Board, but in no

case more than fourteen (14) calendar days following the request for its services, unless the time is extended by mutual agreement of the parties, to render a final and binding determination, except as provided in SECTIONS 3 and 5 of this Article. The Board shall consist of an equal number of representatives of the Union and of the Local Employer's Association and both sides shall cast an equal number of votes at each meeting. The local Employer's Association, on its own initiative, may submit grievances for determination by the Board as provided in this Section.

Notice of appeal to the Local Joint Adjustment Board shall be given within thirty (30) days after termination of the procedures prescribed in SECTION 1 of this Article, unless the time is extended by a mutual agreement of the parties.

SECTION 3. Grievances not disposed of under the procedure prescribed in SECTION 2 of this Article, because of a deadlock, or failure of such Board to act, may be appealed jointly or by either party to a Panel consisting of one (1) representative appointed by the General President of Sheet Metal Workers' International Association and one (1) representative appointed by the Chairman of the Labor Relations Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. Appeals on behalf of employees shall be mailed to the General Secretary-Treasurer of the Sheet Metal Workers International Association and those on behalf of an employer mailed to the Secretary of the Labor Committee of the Sheet Metal and Air Conditioning Contractors' National Association, Inc. Joint appeals shall be mailed to the Secretaries of both Associations. Notice of appeal to the Panel shall be given within thirty (30) days after termination of the procedures prescribed in SECTION 2 of this Article. Such panel shall meet promptly, but in no event more than fourteen (14) calendar days following receipt of such appeal, unless such time is extended by mutual agreement of Panel members. Except in case of deadlock, the decision of the Panel shall be final and binding.

Notwithstanding the provisions of Paragraph 1 of this Section, a contractor who was not a party to the labor agreement of the area in which the work in dispute is performed may appeal the decision of the Local Joint Adjustment Board, including a unanimous decision, and request a Panel hearing as set forth in SECTION 3 of this Article, providing such appeal is approved by both the Chairman of the Labor Relations Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. and by the General President of Sheet Metal Workers' International Association.

SECTION 4. Grievances not settled as provided in SECTION 3 of this Article, may be appealed jointly or by either party to the National Joint Adjustment Board, as established by the Sheet Metal Workers' International Association and the Sheet Metal and Air Conditioning Contractors' National Association, Inc. Submission shall be made and decisions rendered under such procedures as may be prescribed by such Board, from time to time, and mutually approved by the parties creating it. Copies of the procedures shall be available from, and submissions of grievances may be made to, either the General Secretary-Treasurer of Sheet Metal Workers' International Association or the Secretary of the Labor Committee of the Sheet Metal and Air Conditioning Contractors' National Association, Inc. Submissions on appeal to the National Joint Adjustment Board shall be made within thirty (30) days after termination of the procedures prescribed in SECTION 3 of this Article.

SECTION 5. A Local Joint Adjustment Board, Panel and the National Joint Adjustment Board are empowered to render such decisions and grant such relief to either party as they deem necessary and proper, including awards of damages or other compensation and, if it is believed warranted, to direct that the involved agreement and any other agreement or agreements between the employer and any other local union

affiliated with the Sheet Metal Workers' International Association be cancelled, provided that any decision of a Local Joint Adjustment Board directing cancellation of an agreement or agreements may be appealed by the affected employer or local union as a matter of right, directly to the National Joint Adjustment Board.

SECTION 6. In the event any party fails or refuses to comply with any decision of the Local Joint Adjustment Board or Panel, without appeal, or any decision of the National Joint Adjustment Board, within thirty (30) days after notice thereof, a Local Joint Adjustment Board, Panel or any party to the dispute may, in addition to any other legal remedies which may be available to the parties, request the National Joint Adjustment Board to cancel the involved agreement and any other agreements between the involved employer and other local unions affiliated with Sheet Metal Workers' International Association. Unless otherwise decided by unanimous vote, the National Joint Adjustment Board shall cancel such agreements if it finds the involved party to be in non-compliance with the decision in question. Requests for the Board's services shall be made in the same manner and in the same form as other appeals to the National Joint Adjustment Board and the procedures followed shall be the same except that any intermediate step or steps shall be omitted and the request made directly to the National Joint Adjustment Board.

SECTION 7. Failure to exercise the right of appeal at any step thereof within the time limit provided therefor shall void any right of appeal applicable to the facts and remedies of the grievances involved. There shall be no cessation of work by strike or lockout during the pendency of the procedures provided for in this Article. Except in case of deadlock, the decision of the National Joint Adjustment Board shall be final and binding.

SECTION 8. Nothing contained in this Article shall apply to any controversy or dispute arising out of any notice of reopening of this agreement as provided in ARTICLE XVIII thereof.

ARTICLE XV

SECTION 1. The Employer shall contribute each month to the Trustees of the Industry Promotion Fund amounts computed by multiplying the total number of hours worked by journeyman and apprentice sheet metal workers times eight cents (8¢) per hour. Reports shall accompany each remittance on forms required by the Trustees of the Fund.

The Industry Promotion Fund shall be used to promote

the welfare of the Sheet Metal Industry within the City of New York and more specifically to make known the jurisdiction of the industry and to promote programs of industry, education, training, administration of collective bargaining agreements, research and promotion of sheet metal products, stabilize and improve Employer-Union relations, promote, support and improve the training and employment opportunities of employees, and to disseminate to General Contractors, Architects, Engineers and Owners information about the kind, quality and merits of the work done by the industry, to make public the terms and conditions of this Agreement in order to avoid grievances and jurisdictional disputes and provide expanded opportunities for employment of journeyman sheet metal workers.

The Industry Promotion Fund shall be administered by Trustees appointed solely by the Employer.

SECTION 2. (a). The Trustees of the Industry Promotion Fund shall pay the Sheet Metal and Air Conditioning Contractors' National Industry Fund of the United States two cents (2¢) per hour for each hour worked by all employees of the Employer covered by this Agreement. Said payments shall be made from the eight cent (8¢) contribution to the Industry Promotion Fund and shall be remitted to the Industry Promotion Fund for the purposes of collection and transmittal to the Sheet Metal and Air Conditioning Contractors' National Industry Fund of the United States.

(b). Trustees shall provide Union with periodic reports as to the programs of the Fund. A designated representative of the Union shall periodically attend meetings of the Trustees to foster and promote closer cooperation between the Union and the Employer in the promotion of the Industry.

II. MEMORANDUM CONTAINING NO SUBCONTRACTING CLAUSE

For the preservation of the work opportunities of the journeyman sheet metal workers and apprentice sheet metal workers within the collective bargaining unit, each Employer within the collective bargaining unit shall not subcontract out any item or items of work described hereinbelow, except that each said Employer shall have the right to subcontract for the manufacture, fabrication or installation of such work with any other Employer within the collective bargaining unit:

1. Radiator enclosures except when manufactured and sold as a unit including heating element.
2. Functional louvers.
3. Attenuation boxes except for mechanical devices contained therewith.

3a. Sound traps.

4. Dampers: All types of Dampers, including Automatic Dampers and Multi-Zone Dampers, Manual Control Dampers and Fire Control Dampers, except Patented Pressure Reducing Devices. OBD'S and Santrols are per sketches B and C annexed hereto.
5. Skylights, Sheet Metal Sleeves, Pressure Reducing Boxes, Volume Control Boxes, Troffers (plenums), High Pressure Fittings and Gutters (excluding ½ Round Gutters).
6. Air handling units in excess of 30,000 C.F.M.'s.
7. All other work historically, traditionally and customarily performed by journeyman sheet metal workers and apprentice sheet metal workers within the collective bargaining unit in accordance with the collective bargaining agreement.

All the work described in this "no subcontracting clause" shall be performed by journeyman and/or apprentice sheet metal workers in the bargaining unit covered by this Agreement.

RULE XI

Any Employer not a member of the SHEET METAL AND AIR CONDITIONING CONTRACTORS NATIONAL ASSOCIATION, NEW YORK CITY CHAPTER, INC. may

receive the benefits and assume the obligations of this Agreement by and with the Union by signing an exact copy of this Agreement.

RULE XII

The Union agrees that it will not enter into an agreement with any Employer containing more favorable conditions than those agreed to in the current Agreement.

Should it be shown that more favorable conditions prevail, then the more favorable conditions or wages shall apply to all signatories of this Agreement.

RULE XIII

Parties to the Agreement hereby agree to establish a Joint Adjustment Board with equal representation thereon, who shall hold regular or special meetings as circumstances may warrant, and to whom shall be referred all matters of controversy or dispute arising out of the operation of the Agreement or affecting relations between the parties hereto which cannot be settled by the duly authorized representative of the Union and the Employer directly involved in accordance with provisions of the Agreement.

Within ten (10) days after the signing of this Agreement the parties hereto shall notify each other in writing of the names of their representatives on the Joint Adjustment Board. The designation of any representative may be revoked at any time at the pleasure of the Union or the Employer, as the case may be, and any vacancy caused by the death, resignation or revocation of the designation of any such representative shall be filled by the Union or the Employer, as the case may be, notice of any such new designation being given in writing to the other party.

The Joint Adjustment Board shall consist of twelve (12) members designated by the Employer and twelve (12) members designated by the Union.

If either the Employer or the Union is represented at any

meeting by fewer members than the other, the total of the votes cast by either side shall not exceed the number of members present for the side having the smaller representation. A decision rendered by the Board shall be final and binding.

No member of a Joint Adjustment Board directly involved in a case before the Board shall sit in consideration of the case before the Board.

RULE XIX

An employer having been charged with violating ARTICLE VII, SECTION I of the Agreement, for paying to a journeyman sheet metal worker less than the prescribed rate of wages shall, on notice, appear before a meeting of the Joint Adjustment Board, called to consider the complaint and charges. Upon the submission of conclusive proof of said charges of violation, the Joint Adjustment Board shall find the Employer guilty, and order that, without undue delay, the Employer shall pay in cash to the journeyman sheet metal worker involved the difference between the prescribed wage rate and that tendered by the Employer and accepted by the journeyman sheet metal workers.

A journeyman sheet metal worker violating this Agreement signed as of the 31st day of August, 1972, by accepting less than the rate of wages prescribed in ARTICLE VII, SECTION I of this Agreement, shall, without undue delay, pay as liquidated damages into the Sick Dues Relief Fund of Local Union No. 28 the cash difference between the Agreement wage rate prescribed and that accepted by him from the convicted Employer, and be subject to such discipline exercised as provided in the Constitution and Ritual of the Sheet Metal Workers International Association.

An Employer tried and convicted for violation of any other provisions of the Agreement and rules or regulations shall have recorded against him the fact of such violation as a first offense, and be censured; and on the second offense he shall be penalized either in the manner prescribed above or in lieu thereof shall have a fine imposed that will be commensurate with the loss adjudged by the Joint Adjustment Board to have been sustained by journeyman sheet metal workers by reason of such violation.

APPENDIX F

MEMORANDUM OF UNDERSTANDING made this 6TH day of ~~June~~ JULY 1972 by and between SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 28 (hereinafter referred to as the "UNION") and THREE BORO SHEET METAL + VENTILATING CO., INC (hereinafter referred to as the "EMPLOYER").

W I T N E S S E T H :

WHEREAS, the UNION and EMPLOYER are parties signatory to a Collective Bargaining Agreement dated August 4, 1969 (hereinafter referred to as the "AGREEMENT"), covering all of the journeymen and apprentice sheet metal workers employed by the EMPLOYER (hereinafter referred to as the "EMPLOYEES") for the period August 4, 1969 - June 30, 1972; and

WHEREAS, the AGREEMENT terminates on June 30, 1972; and

WHEREAS, the UNION and EMPLOYER have negotiated and agreed upon new terms, conditions and provisions of employment for the EMPLOYEES, including certain amendments and modifications of the AGREEMENT, to be confirmed in writing, for the period July 1, 1972 to June 30, 1973;

NOW, THEREFORE, the UNION and EMPLOYER mutually agree

18. It is expressly understood and agreed that if the UNION should at any time hereafter enter into an agreement with the Sheet Metal and Air-Conditioning Contractors National Association, New York Chapter, Inc., which contains any term, condition or provision different from the terms, conditions and provisions of the Collective Bargaining Agreement, the Collective Bargaining Agreement shall forthwith correspondingly be revised, modified and amended to incorporate any such different term, condition or provision.

19. Wherever there is or may appear to be any difference, conflict or inconsistency between any provision of the AGREEMENT and any provision of this Memorandum, then in such event(s) the provisions of this Memorandum shall prevail in all respects for all purposes.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the 6th day of ~~June~~ July 1972.

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 28

By _____

TUBE BORO SHEET METAL & VENTILATING CO, INC.

By _____

(Transcribed)

APPENDIX G

October 31, 1967

Memorandum

To: Hon. Eugene Hult
Commissioner
Department of Public Works
New York, New York

Meetings were held with representatives of Local Union 28, of the Sheetmetal Workers International Association, Sheetmetal Contractors Association of New York, the Department of Public Works of New York City, Gruzen & Partners (Architects for the New Police Headquarters Building) Carrier Air Conditioning Company and Joseph R. Loring & Associates (Consulting Mechanical and Electrical Engineers for the New Police Headquarters Building).

The following agreements were reached:

1. The air conditioning system for the building will consist of an induction unit system for the perimeter. The system for the interior will consist of a ducted supply system within a plenum. The plenum will consist of a structural waffle slab on the bottom and a cover slab on top. The plenum will be used for return air. Vertical feeders for supply and return will be sheet metal.

The underside of the waffles will be left exposed and a Carrier "Moduline Weathermaster" Air Terminal will be used as the supply and possibly as the return air terminals.

2. The purpose of the meeting was to obtain agreement by the Local and by the contractors associations for such a design and for the installation of same at the New Police Headquarters building. With the exception of the Moduline terminal, full acceptance was given by these parties.

3. With respect to the Moduline terminal, it was stated that the basic open question was the insistence of the Local that the 4-sided plenum comprising the top portion of the terminal be manufactured by Local Union 28.

Carrier indicated that they are presently developing a design of the terminal which would make possible the manufacture of the plenum by the Local. It is anticipated that this design would be completed within one month and that they fully believe that it will be acceptable to Local 28.

[General Counsel's Exhibit 2,

4. The Architect and Engineer stated that they would require individual responsibility for the plenum and terminal performance as a single unit. It was proposed that the specifications would contain all clauses required by Carrier to give Carrier sufficient authority to enable Carrier to assume this responsibility. Carrier agreed that with these stipulations, they will be prepared to assume this responsibility.

Nothing contained in the foregoing memorandum shall be deemed or construed to indicate that the choice of design or the choice of equipment was in any way dicted [sic] by the requirements of either association or of Local 28, but the choice of the system and the design characteristics thereof are exclusively the choice of the Architects and Engineers named above.

Local Union 28 of the Sheetmetal Workers
International Association by

/s/ Mel Farrell, President

Sheet Metal Contractors Association of New York City

by /s/ Benjamin Rosenthal , Secretary

Mechanical Contractors Association of New York

by /s/ A.C. Contardi

Carrier Air Conditioning Company

by /s/ W. R. Alexander

Grazen & Partners, Architects by /s/ David White

Joseph R. Loring & Associates by /s/ Adolph Nuchtern

APPENDIX A

APPENDIX I

HARRY G. RUECKERT, Fin. Secy-Treas. EDWARD J. O'REILLY, Recording Secretary

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION
LOCAL UNION No. 23 OF NEW YORK CITY
Affiliated with The New York State Federation of Labor, Central Trades and Labor Council of Greater New York, Building and Construction Trades Council of New York City
350 Broadway, New York, N.Y. 10013 • Phone WAlker 5-0800
DAN PASQUINUCCI, President

REPORT

Sheet Metal Industry Research and Review Committee

I. PURPOSE: To evaluate the Carrier Moduline Variable Volume Unit.

II. MEMBERS: Richard Berman
Howard Bretz
William Connolly

III. RECOMMENDATION: Committee unanimously recommends acceptance of Moduline variable volume system, factory fabricated, leak tested and calibrated.

BACKROUND:

1. Advantages to the Sheet Metal Worker

a. Carrier Moduline is an "all air system"

b. Variable Volume Systems have an increased amount of distribution duct.

c. Sheet Metal Workers do controls (All of the floor system pneumatic controls are done by sheet metal worker.)

d. Increases responsibility for total system. (The sheet metal worker installs all comfort controls from fan to outlet.)

e. Elimination of other hydronic systems.

f. Better control of testing and balancing. (No other

2. Comparison to Other Types of Systems

a. Dual Duct and Air Troffer (In these systems further controls are necessary by the plumber, electrician and steamfitter. VAV Systems stop at the installation of the diffuser wherein all of the controls are contained. In short, the whole system is contained in the diffuser)

3. Quality Control (the only method the manufacturer can test control and guarantee production is to make a complete air tight unit that can be put under pressure)

4. Energy Conservation (There is no wasted energy. VAV supplies only the energy necessary to maintain comfort conditions)

5. Carrier's Role in A.C. Market (Carrier has marketed tens of thousands of these units in other areas of the country but has withdrawn from the N.Y.C. market. The Moduline is extremely popular with architects and engineers but Carrier finds they cannot accept responsibility for the units when they cannot control or test the units. Presently, Carrier does not promote the system in N.Y.C. because of the trade restriction.

In addition, Carrier has agreed to use the Moduline only when the air system is direct duct connected.)

6. Detailed Examination of Carrier Moduline (See physical sample)

IV. In order to provide a more detailed report the following will serve to provide additional backround to support the above

The Variable Volume System is the fastest growing air conditioning system in our industry today. It has gained tremendous acceptance from architects and engineers and owners around the world. Major companies have incorporated this new system into their architectural and building plans. This system should be vigorously promoted and sold in New York City.

The all air Variable Volume System introduces another concept into our industry. It permits a building to be air conditioned economically by circulating air throughout the entire building. It means that the sheet metal worker will enjoy more work and a larger portion of the work on many jobs because:

1. All of the cooling is done by air. Every Moduline system requires a central station air conditioning apparatus and a duct distribution system. This is a system that belongs to the sheet metal worker.

2. Moduline systems are now being installed in office buildings, educational facilities of all types, medical buildings, libraries, and in many other applications requiring comfort air conditioning. In many of these markets the moduline system replaces water type systems which represent little sheet metal work such as the fan coil system, unit ventilator system or through the wall type units. Elimination of water piping automatically makes the sheet metal portion of the job become larger.

3. When installing a moduline unit the sheet metal man is

handling and installing a complete air conditioning device including its own system powered controls. This entire device is the responsibility of the sheet metal worker. Moduline units require precision installation by the sheet metal man which will increase his work.

4. The duct distribution system becomes more extensive since moduline makes individual room control economically feasible. Duct work now instead of being terminated in a corridor will be extended into individual offices to feed moduline units which have the capability of giving individual office temperature control. Most installations will require moduline units covering areas no larger than 100 to 150 sq. ft. The use of such a large number of terminal devices assures an extensive duct system. The duct work in a moduline system must be constructed to medium pressure standards. Air leaks in this type of system can not be tolerated. Since the installation is more complex than normal this too results in more sheet metal installation hours.

5. The moduline system is not compatible for use with roof top units. Roof top units by their nature mean minimum duct systems. The moduline system has been a competitive system to the roof top market and a deterant to their use.

A tremendous advantage of the moduline system is its ability to give an owner an opportunity to fulfill his obligation to the community regarding environmental conservation. The moduline

system offers the lowest operating cost of any system available. When compared to other types of systems, operating cost savings of as much as 58% can be realized. The lower energy requirement means a more efficient building and, therefore, helping to reduce our pollution problem. This product is typical of those, introduced by the United States contributing to its world leadership in science.

The use of the VAV system has become established with or without Carrier Air Conditioning Company.

Competitive systems which are acceptable in New York City do not offer any additional sheet metal work. In fact, some of the competitive offerings are used with a large control devices and a minimum number of outlets, which in turn, require a minimum duct distribution system.

Respectfully submitted,

Sheet Metal Industry Research
& Review Committee

APPENDIX N

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document B231

Standard Form of Agreement Between Owner and Architect

on a basis of a

MULTIPLE OF DIRECT PERSONNEL EXPENSE

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION

AGREEMENT

made this 1st day of April in the year of Nineteen Hundred and 73.

BETWEEN

Albert Einstein College of Medicine of Yeshiva University, the Owner, and

Zachary Rosenfield, of the firm Isadore and Zachary Rosenfield the Architect.

It is the intention of the Owner to

Remodel and furnish wing "A" of the 1st floor of Van Etten Hospital to provide quarters for the Methadone Chest Disease Program

hereinafter referred to as the Project

The Owner and the Architect agree as set forth below.

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

ARTICLE 1

ARCHITECT'S SERVICES

1.1 BASIC SERVICES

The Architect's Basic Services consist of the five phases described below and include normal structural, mechanical and electrical engineering services.*

SCHEMATIC DESIGN PHASE

1.1.1 The Architect shall consult with the Owner to ascertain the requirements of the Project and shall confirm such requirements to the Owner.

1.1.2 The Architect shall prepare Schematic Design Studies consisting of drawings and other documents illustrating the scale and relationship of Project components for approval by the Owner.

1.1.3 The Architect shall submit to the Owner a Statement of Probable Construction Cost based on current area, volume or other unit costs.

DESIGN DEVELOPMENT PHASE

1.1.4 The Architect shall prepare from the approved Schematic Design Studies, for approval by the Owner, the Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical and electrical systems, materials and such other essentials as may be appropriate.

1.1.5 The Architect shall submit to the Owner a further Statement of Probable Construction Cost.

CONSTRUCTION DOCUMENTS PHASE

1.1.6 The Architect shall prepare from the approved Design Development Documents, for approval by the Owner, Working Drawings and Specifications setting forth in detail the requirements for the construction of the entire Project including the necessary bidding information, and shall assist in the preparation of bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and the Contractor.

1.1.7. The Architect shall advise the Owner of any adjustments to previous Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.

1.1.8 The Architect shall assist the Owner in filing the required documents for the approval of governmental authorities having jurisdiction over the Project.

BIDDING OR NEGOTIATION PHASE

1.1.9 The Architect, following the Owner's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals, and in awarding and preparing construction contracts.

CONSTRUCTION PHASE — ADMINISTRATION OF THE CONSTRUCTION CONTRACT

1.1.10 The Construction Phase will commence with the award of the Construction Contract and will terminate when the final Certificate for Payment is issued to the Owner.

1.1.11 The Architect shall provide Administration of the Construction Contract as set forth in Articles 1 through 14 inclusive of the latest edition of AIA Document A201, General Conditions of the Contract for Construction, and the extent of his duties and responsibilities and the limitations of his authority as assigned thereunder shall not be modified without his written consent.

1.1.12 The Architect, as the representative of the Owner during the Construction Phase, shall advise and consult with the Owner and all of the Owner's instructions to the Contractor shall be issued through the Architect. The Architect shall have authority to act on behalf of the Owner to the extent provided in the General Conditions unless otherwise modified in writing.

1.1.13 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

1.1.14 The Architect shall make periodic visits to the site to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations as an architect, he shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. The Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

1.1.15 Based on such observations at the site and on the Contractor's Applications for Payment, the Architect shall determine the amount owing to the Contractor and shall issue Certificates for Payment in such amounts. The issuance of a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on the Architect's observations at the site as provided in Subparagraph 1.1.14 and on the data comprising the Application for Payment, that the Work has progressed to the point indicated; that to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and

to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. By issuing a Certificate for Payment, the Architect shall not be deemed to represent that he has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.

1.1.16 The Architect shall be, in the first instance, the interpreter of the requirements of the Contract Documents and the impartial judge of the performance thereunder by both the Owner and Contractor. The Architect shall make decisions on all claims of the Owner or Contractor relating to the execution and progress of the Work and on all other matters or questions related thereto. The Architect's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents.

1.1.17 The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such Work be then fabricated, installed or completed.

1.1.18 The Architect shall review and approve shop drawings, samples, and other submissions of the Contractor only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents.

1.1.19 The Architect shall prepare Change Orders.

1.1.20 The Architect shall conduct inspections to determine the Dates of Substantial Completion and final completion, shall receive and review written guarantees and related documents assembled by the Contractor, and shall issue a final Certificate for Payment.

1.1.21 The Architect shall not be responsible for the acts or omissions of the Contractor, or any Subcontractors, or any of the Contractor's or Subcontractors' agents or employees, or any other persons performing any of the Work.

1.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

1.2.1 If more extensive representation at the site than is described under Subparagraphs 1.1.10 through 1.1.21 inclusive is required, and if the Owner and Architect agree, the Architect shall provide one or more Full-Time Project Representatives to assist the Architect.

1.2.2 Such Full-Time Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as mutually agreed between the Owner and the Architect as set forth in an exhibit appended to this Agreement.

1.2.3 The duties, responsibilities and limitations of authority of such Full-Time Project Representatives shall be set forth in an exhibit appended to this Agreement.

1.2.4 Through the on-site observations by Full-Time Project Representatives of the Work in progress, the Architect shall endeavor to provide further protection for the Owner against defects in the Work, but the furnishing of such project representation shall not make the Architect responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs, or for the Contractor's failure to perform the Work in accordance with the Contract Documents.

1.3 ADDITIONAL SERVICES

If any of the following Additional Services are authorized by the Owner, they shall be paid for by the Owner as hereinbefore provided.

~~1.3.1 Providing special analyses of the Owner's needs, and programming the requirements of the Project.~~

~~1.3.2 Providing financial feasibility or other special studies.~~

~~1.3.3 Providing planning surveys, site evaluations, or comparative studies of prospective sites.~~

~~1.3.4 Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project.~~

~~1.3.5 Providing services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.~~

1.3.6 Preparing documents for alternate bids or out-of-sequence services requested by the Owner.

1.3.7 Providing ~~Detailed Estimates of Construction Cost or~~ detailed quantity surveys or inventories of material, equipment and labor.

~~1.3.8 Providing interior design and other services required for or in connection with the selection of furniture and furnishings.~~

~~1.3.9 Providing services for planning tenant or rental spaces.~~

1.3.10 Making major revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of the Architect.

1.3.11 ~~Making investigations involving detailed appraisals and valuations of existing facilities, and~~ surveys or inventories required in connection with construction performed by the Owner.

1.3.12 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing professional services of the type set forth in Paragraph 1.1 as may be required in connection with the replacement of such Work.

1.3.13 Providing professional services made necessary by the default of the Contractor or by major defects in the Work of the Contractor in the performance of the Construction Contract.

1.3.14 Preparing a set of reproducible record prints of drawings showing significant changes in the Work made during the construction process, based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

1.3.15 Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operating and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

1.3.16 Providing Contract Administration and observation of construction after the Construction Contract Time has been exceeded or extended by more than 30 days through no fault of the Architect.

1.3.17 Providing services after issuance to the Owner of the final Certificate for Payment.

1.3.18 Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.

~~**1.3.19** Providing services of professional consultants for other than the normal structural, mechanical and electrical engineering services for the Project.~~

1.3.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 2

THE OWNER'S RESPONSIBILITIES

2.1 The Owner shall provide full information regarding his requirements for the Project.

2.2 The Owner shall designate, when necessary, a representative authorized to act in his behalf with respect to the Project. The Owner or his representative shall examine documents submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect's work.

2.3 The Owner shall furnish a certified land survey of the site giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.

2.4 The Owner shall furnish the services of a soils engineer or other consultant when such services are deemed necessary by the Architect, including reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional interpretations thereof.

2.5 The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

2.6 The Owner shall furnish such legal, accounting, and insurance counselling services as may be necessary for the Project, and such auditing services as he may require to ascertain how or for what purposes the Contractor has used the moneys paid to him under the Construction Contract.

2.7 The services, information, surveys and reports required by Paragraphs 2.3 through 2.6 inclusive shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

2.8 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents, he shall give prompt written notice thereof to the Architect.

2.9 The Owner shall furnish information required of him as expeditiously as necessary for the orderly progress of the Work.

APPENDIX O

HANKINS AND ANDERSON

CONSULTING ENGINEERS

MECHANICAL
ELECTRICAL
CIVIL
LAND PLANNING
LAND SURVEYING

2117 NORTH HAMILTON STREET • RICHMOND, VIRGINIA 23230
673 BOYLSTON STREET • BOSTON, MASSACHUSETTS 02116

TELEPHONE: 703-353-1221
TELEPHONE: 617-261-5740

REPLY TO RICHMOND OFFICE
POST OFFICE BOX 6872 23230

PARTNERS
ALEXANDER L. ANDERSON, P. E.
RICHARD P. HANKINS, P. E.
CREED T. ELLIOTTE, P. E., C.L.S.
HSING-CHUNG YU, P. E.

ASSOCIATES
ROBERT M. LUMPKIN, P. E.
JOHN C. REID, P. E.
BENNY G. FORTNER, P. E.
JOHN L. KERNER, JR., P. E.

CONSTRUCTION ADMINISTRATOR
HARLEY E. YOUNG

SURVEYOR ASSOCIATE
JOHN M. FOSTER, C.L.S., P. E.

MANAGER BOSTON OFFICE
EUGENE M. BARD

RECEIVED
MAY 4 '73

REFER TO	INITIAL
2	TJ
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INITS. BY	DATE

May 3, 1973

Isadore and Zachary Rosenfield
Architects and Hospital Consultants
58 West Fortieth Street
New York, New York 10018

Re: Van Etten Drug Treatment Center

Gentlemen:

We appreciate the invitation to render professional engineering services for you in connection with the Van Etten Drug Treatment Center, and we confirm herewith our understanding of the agreement we have reached with respect to our services and charges on the project.

Our services on this project would be those required in connection with the heating, ventilating, air conditioning, plumbing and electrical systems, the outside utilities and incidental related facilities for the project. Our work on this would include conferences, studies and planning with your office and the Owner as required for proper coordination of the work; preparation of preliminary and working drawings and specifications; checking shop drawings; and periodic visits to the site of the work during construction to familiarize ourselves generally with the progress of the work covered by our designs and specifications and to determine in general if such work is proceeding in accordance with the contract documents.

Our services would also include providing you with the tracings of our drawings and mastersheets of our specifications, ready for duplication by you to serve the needs of reviewing authorities, estimating, bidding and construction.

Our charges for the foregoing services will be made on a cost-plus basis for all technical personnel time at our regular hourly rates which are $30.00 for principals, $25.00 for project manager, and 2.5 times our direct personnel expense for other technical personnel directly engaged on the project. Our out-of-pocket expenses for reproductions of drawings and specifications, out-of-town travel, and long distance

telephone calls will be reimbursable. We guarantee that our total charges for the project will not exceed Twenty-Six Thousand Five Hundred Dollars ($26,500.00).

We have commenced our work, as you know.

If the foregoing meets with your understanding and approval, we will be glad to have your signature of acceptance on the attached copy of this letter.

With many thanks, we are

Very truly yours,

HANKINS and ANDERSON

H. C. Yu

HCY/cmb

The foregoing is approved and accepted

ISADORE AND ZACHARY ROSENFIELD, ARCHITECTS

By Zachary Rosenfield Date May 10, 1973

APPENDIX P

SPECIFICATIONS

TITLE SHEET

Project No.: 7305

Project Title: Van Etten Drug Treatment Program

Project Location: Van Etten Hospital
Bronx Municipal Hospital Center
Morris Park Avenue & Seminole Ave.
Bronx, N. Y. 10461

Date: June 18, 1973

Prepared by: ISADORE AND ZACHARY ROSENFIELD
ARCHITECTS/HOSPITAL CONSULTANTS
58 West 40th Street
New York, N. Y. 10018

Consulting Engineers: HANKINS & ANDERSON
2117 North Hamilton Street
Richmond, Va. 23230

This project is financed in part by a grant from the National Institute of Mental Health.

3. PREPARATION OF BIDS:

(a) Interpretation of Documents:

(1) Questions: Discrepancies, omissions, shall be communicated in writing to the Architect for interpretation.

(2) Answers: Any interpretation made by the Architect will be issued in the form of an Addendum to the documents.

(3) Necessity to Question Promptly: All inquiries for interpretation of plans and specifications should be submitted so as to arrive at the Architect's Office at least days prior to the bid opening date.

(4) Oral Questions and Answers Prohibited: No oral explanation in regard to the meaning of the documents will be made, and no oral instructions will be given, and none shall be binding on the Owner.

(b) Substitutions:

(1) Representation: Each bidder represents that his bid is based upon the materials and equipment described in the bidding documents.

(2) Substitutions: No substitution will be considered and the opportunity to request substitutions shall be waived, unless written request has been submitted to the Architect in the Architect's sole discretion, for approval at least ten days prior to the date for receipt of bids. The Architect shall have the absolute right, in his sole discretion, to disapprove any request made for substition(s). Each such request shall include a complete description of the proposed substitute, the name of the material or equipment for which it is to be substituted, drawings, cuts, performance and test data, and any other data or information necessary for a complete evaluation.

(3) Approval of Substitution: If the Architect approves any proposed substitution, such approval will be set forth in an Addendum.

39. VARIABLE VOLUME ROOM TERMINALS

a. Furnish and install, except as specified otherwise hereinafter and where shown and as specified and scheduled and designated "G-1" and "G-2" on the drawings and specified herein variable volume linear air diffusers, Carrier "Moduline", or approved equal.

b. The basic unit shall consist of plenum, bellows assembly, diffuser section, controls and accessories as follows:

1) Plenum section shall be constructed of 20 gauge galvanized steel with 1/2 in. coated fiber glass acoustical lining. Plenum length shall be 4 ft.

2) Bellows assembly shall consist of two neoprene bellows and a steel cutoff section with felt edges to reduce sound generation, all in a rigid support. Bellows shall be attached to diffuser center plate and entire assembly shall be removable for service or inspection.

3) Diffuser section shall be constructed of steel with white baked prime finish. Exposed painted surfaces of diffusers shall be covered with strippable, protective film to be removed after installation.

4) Where indicated on drawings, unit shall have one factory installed thermostat and one volume regulator powered by supply duct pressure. Thermostats shall have an operating range of 65°F. to 85°F. with a throttling range not greater than +1.5°F. Thermostats shall be adjustable by flag type lever. Volume regulators shall maintain a constant discharge air volume regardless of variations in duct pressure from 0.75 to 5.0 in. wg. Regulators shall be easily adjusted in the field and adjusting mechanism shall be calibrated in terms of discharge air quantity. Controls shall be suitable for operating with duct pressures between 0.75 and 5.0 in. wg.

5) Accessories shall include: elastomeric collar, hanger mounting bracket; side and end trim strips; filter; regulator; thermostat; control tubing, for a completely operable system.

APPENDIX Q

THIS AGREEMENT made the 26 day of June , 1973 ~~1966~~, by and between

THE ORMAR BUILDING CORPORATION

hereinafter called the GENERAL SUPERVISING CONTRACTOR, and YESHIVA UNIVERSITY, a domestic corporation, organized and existing under the laws of the State of New York, having its principal office at 500 West 185th Street, in the Borough of Manhattan, City of New York, hereinafter called the OWNER,

W I T N E S S E T H :

That, Whereas, the Owner intends to Renovate ~~construct~~ Wing 1A Van Etten Hospital. To convert same for use as a Methadone Maintenance Program.

NOW, THEREFORE, the General Supervising Contractor and the Owner, for the consideration hereinafter named, agree as follows:

ARTICLE 1.

THE WORK TO BE DONE AND THE DOCUMENTS FORMING THE CONTRACT.

The General Supervising Contractor agrees to provide complete supervision and act as agent for the Owner for the Renovation to Wing 1A

Van Etten Hospital

to do all things necessary for the proper erection, construction and completion of the work shown or required by the drawings and described in the specifications prepared by I & Z Rosenfield, Architects hereinafter called ARCHITECT, and such additional work prescribed by the contract documents, complete in every respect and ready for occupancy, including the work of all mechanical trades and approved alternates, all in accordance with the contract documents, as hereinafter set forth.

The term"contract" or "contract documents" as used herein, means and includes this agreement and the following documents and drawings which are as fully a

part of this agreement as if hereto attached or herein repeated, and which have been signed or initialed by the parties hereto: Drawing A-1, A-2, P-1, M-1, M-2, E-1, E-2, E-3 all dated 6/18/73 and specifications Volume 1 and Volume 2 dated June 25, 1973.

ARTICLE 2.

CHANGES IN THE WORK

The Owner, through the Architect and/or the Authorized agent of the Owner, may from time to time, by written instructions or drawings issued to the General Supervising Contractor, make changes in the above named Drawings and Specifications, issue additional instructions, require additional work or direct the omission of work previously ordered, and the provisions of this contract shall apply to all such changes, modifications and additions with the same effect as if they were embodied in the original Drawings and Specifications.

ARTICLE 10.

SEPARATE CONTRACTS

All portions of the work that the General Supervising Contractor's organization has not been accustomed to

perform, or that the Owner may direct shall be executed under separate contracts, let by the General Supervising Contractor direct. Where separate contracts for the performance of the work are to be let, the General Supervising Contractor shall procure competitive bids for the work, and shall recommend to the Owner the award of such contract. The General Supervising Contractor shall submit to the Owner the name of each such separate contractor, submitting bids, the amount of such bid, together with full information as to the qualification and ability of such proposed contractor to perform the work satisfactorily. The General Supervising Contractor shall prepare the necessary contract therefor, which shall be in conformity with the contract documents, attach its approval in writing, cause said contract to be executed by each such separate contractor, and then submit the same to the Owner for its written approval and execution.

The General Supervising Contractor being fully responsible for the general management of the building operation, shall have full directing authority over the execution of the separate contracts.

The separate contractors shall not only cooperate with each other, but they shall conform to all directions of the General Supervising Contractor in regard to the

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A401

SUBCONTRACT

The Standard Form of Agreement Between Contractor and Subcontractor

Use only with the latest edition of AIA Document A201, General Conditions of the Contract for Construction.

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES. CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION

AGREEMENT

made this First day of October in the year Nineteen Hundred and Seventy Three

BETWEEN The Ormar Building Corporation
739 Main Street
New Rochelle, N. Y. 10801 the Contractor, and

Acme Climate Control
49 Purchase Street, Rye, N. Y. 10580 the Subcontractor;

for Heating, Ventilating and Air Conditioning work for

Van Etten Drug Treatment Program the Project, for

Albert Einstein College of Medicine (and/or Health & Hospital Corporation, City of New York) the Owner;

Designed by I. & Z. Rosenfield, Architects
58 West 40th Street
New York, N. Y. 10018
and
Haskins and Anderson, Consulting Engineers
2117 Hamilton Street
Richmond, Va. 23230 the Architect.

The Contractor and Subcontractor agree as set forth below.

ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents for this Subcontract consist of this Agreement and any Exhibits attached hereto, the Agreement between the Owner and Contractor dated June 26, 1973, the Conditions of the Contract between the Owner and Contractor (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda issued prior to execution of the Agreement between the Owner and Contractor, and all Modifications issued subsequent thereto.

All of the above documents, which form the Contract between the Owner and Contractor, are a part of this Subcontract and shall be available for inspection by the Subcontractor upon his request.

ARTICLE 2
THE WORK

The Subcontractor shall furnish all labor, materials and equipment and shall perform all the Work for

Heating, Ventilating and Air Conditioning in accordance with Plans: A-1, A-2, P-1, M-1, M-2, E-1, E-2, E-3, all dated June 18, 1973 and specifications dated June 18, 1973, (work to include all work as described in base bid. No deletions or omissions.)

ARTICLE 11
SUBCONTRACTOR'S RESPONSIBILITIES

11.1 The Subcontractor shall be bound to the Contractor by the terms of this Agreement and of the Contract Documents between the Owner and Contractor, and shall assume toward the Contractor all the obligations and responsibilities which the Contractor, by those Documents, assumes toward the Owner, and shall have the benefit of all rights, remedies and redress against the Contractor which the Contractor, by those Documents, has against the Owner, insofar as applicable to this Subcontract, provided that where any provision of the Contract Documents between the Owner and Contractor is inconsistent with any provision of this Agreement, this Agreement shall govern.

11.10 The Subcontractor agrees that if he should neglect to prosecute the Work diligently and properly or fail to perform any provisions of this Subcontract, the Contractor, after three days written notice to the Subcontractor, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due the Subcontractor, provided, however, that if such action is based upon faulty workmanship or materials and equipment, the Architect shall first have determined that the workmanship or materials and equipment are not in accordance with the Contract Documents.

11.19 The Subcontractor agrees that all Work shall be done subject to the final approval of the Architect. The Architect's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents.

BEST COPY AVAILABLE

APPENDIX S

PURCHASE ORDER

ACME CLIMATE CONTROL CORP.

49 PURCHASE STREET • RYE, NEW YORK 10580 • PHONE 914 967-4700, 212 231-1200

TO

Carlton-Stuart Corp.
13-02 44th Avenue
L.I.C., N.Y. 11101

SHIP TO

Van Etten Drug Treatment Center
Morris Park Ave. & Seminole Ave.
Bronx, New York (Notify office 48 hrs. before any deliveries)

11/10/73 — No. 4937

CONFIRMING

1	38AD044 Condensing unit (In stock in Nashville, Delivery upon request)	
1	39BD100R10 Air Handler (delivery no later than week of 1/21/74)	
12	Variable Volume Terminals & Sleeves w/access', (delivery no later than week of 1/14/73)	
	(Delivery dates quoted 11/6/73 as per Stanley Krenkowitz)	
	Tax exempt project - certificate enclosed	
	Price includes delivery as per our instructions	20,350.00

#24
Ap. S

Marcia Tyson
AUTHORIZED SIGNATURE

Ltr 2, App S.

OUR PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, SHIPPING PAPERS AND PACKAGES

APPENDIX T

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A401

SUBCONTRACT

Standard Form of Agreement Between Contractor and Subcontractor

Use with the latest edition of the appropriate AIA Documents as follows:

A101, Owner-Contractor Agreement — Stipulated Sum
A107, Owner-Contractor Agreement — Short Form for Small Construction Contracts
A111, Owner-Contractor Agreement — Cost plus Fee
A201, General Conditions of the Contract for Construction.

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES. CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION

This document has been approved and endorsed by the American Subcontractors Association

AGREEMENT

made this 6th day of December in the year Nineteen Hundred and Seventy-three.

BETWEEN the Contractor: Acme Climate Control Corp.
49 Purchase Street, Rye, N.Y. 10580

and the Subcontractor: Three Boro Sheet Metal & Ventilating Co., Inc.
11 Wythe Avenue, Brooklyn, New York 11211

Project: Van Etten Drug Treatment Center
Morris Park Avenue & Seminole Avenue, Bronx, N.Y.

Owner: Albert Einstein College of Medicine (&/or
Health & Hospital Corporation, City of N.Y.)

Architect: I. & Z. Rosenfeld, Architects
58 West 40th Street, New York, New York 10018

The Contractor and Subcontractor agree as set forth below.

ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents for this Subcontract consist of this Agreement and any Exhibits attached hereto, the Agreement between the Owner and Contractor dated , the Conditions of the Contract between the Owner and Contractor (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda issued prior to execution of the Agreement between the Owner and Contractor, and all Modifications issued subsequent thereto.

All of the above documents are a part of this Subcontract and shall be available for inspection by the Subcontractor upon his request.

The only Addenda and Modifications issued prior to the execution of this Subcontract and applicable to it are as follows:

ARTICLE 2
THE WORK

The Subcontractor shall furnish & install ductwork as per plans and specifications and as per your quotation dated Oct. 8, 1973 (copy attached).

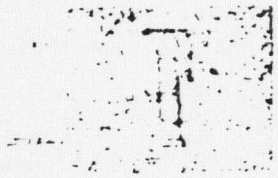
ARTICLE 11
SUBCONTRACTOR'S RESPONSIBILITIES

11.1 The Subcontractor shall be bound to the Contractor by the terms of this Agreement and of the Contract Documents between the Owner and Contractor, and shall assume toward the Contractor all the obligations and responsibilities which the Contractor, by those Documents, assumes toward the Owner, and shall have the benefit of all rights, remedies and redress against the Contractor which the Contractor, by those Documents, has against the Owner, insofar as applicable to this Subcontract, provided that where any provision of the Contract Documents between the Owner and Contractor is inconsistent with any provision of this Agreement, this Agreement shall govern.

11.10 The Subcontractor agrees that if he should neglect to prosecute the Work diligently and properly or fail to perform any provisions of this Subcontract, the Contractor, after three working days' written notice to the Subcontractor, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due the Subcontractor provided, however, that if such action is based upon faulty workmanship or materials and equipment the Architect shall first have determined that the workmanship or materials and equipment are not in accordance with the Contract Documents.

11.19 The Subcontractor agrees that all Work shall be done subject to the final approval of the Architect. The Architect's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents.

APPENDIX T-1



ENGINEERS CONTRACTORS

THREE BORO SHEET METAL AND VENTILATING CO., INC.

HEATING • VENTILATING • AIR CONDITIONING

11 WYTHE AVENUE
BROOKLYN, N. Y. 11211
212 - 387-2709

October 8, 1973

Acme Climate Control Corp.
49 Purchase Street
Rye, New York 10580

Att: Mr. Joseph Reyes

Re: Van Etten Drug Treatment Program
Our Job #73-50

Gentlemen:

We herewith confirm our verbal agreement to furnish labor & material as per specification and mechanical drawings M-1 & M-2, dated 8/8/73, revision #1, as prepared by Hankins & Anderson, Consulting Engineers.

We agree to furnish and install high pressure ductwork, low pressure ductwork, casings & plenums, accoustic lining, turning vanes, fire dampers & access doors where indicated on the drawings only & flexible duct connectors.

We agree to install only (furnished by others) air outlets, fans, air conditioning equipment (50% labor) automatic dampers & sound traps.

We take exception to the following: removals of ductwork, cutting, patching, painting, housekeeping, pipe sleeves, testing & balancing, fin-tube enclosures, plenums for Carrier units (supply outlets), fire dampers thru interior walls, dunnage steel, flashings, hold harmless insurance, bonds & overtime.

The above work to be completed for the agreed sum of ~~THIRTY-THREE THOUSAND DOLLARS ($33,000.00)~~.

Cont'd

October 8, 1973

Re: Van Etten Drug Treatment Program

Please forward your purchase order & a tax exempt certificate on the above project, so there will be no delay in the progress of the job.

Very truly yours,

THREE BORO SHEET METAL
& VENTILATING CO., INC.

Alfred G. Wonesh
President

AGW/ek

ACCEPTED BY: _____
Acme Climate Control Corp.

APPENDIX U

March 12, 1974

Sheet Metal Workers International Association
Local #23
1790 Broadway
New York, New York 10019

Attention: Mr. Dan Pasquarucci
President

Dear Dan:

Attached please find a draft memorandum of agreement regarding acceptance and installation of Carrier Dual Moduline Units in New York City. The draft includes most of the terms of the proposed agreement of October, 1972, with the changes discussed with you and Mr. Degen February 20, 1974. If acceptable, please sign in the space provided and return to me.

We understand that the Van Etten job is proceeding and that the units for that job are being installed by members of Local #23 and that no charges will be brought against the Sheet Metal Contractor.

Carrier will withdraw its pending unfair labor practice charges against Local #23 upon public announcement of your agreement with the attached memorandum, provided that this announcement is made no later than July 1, 1974. During this period, Carrier will not ask the NLRB to proceed with the injunction or complaint issued by the General Counsel of the NLRB as a result of these charges. During this same period Carrier will not insist on installing any Dual Moduline Units except at the Van Etten job.

When you return the executed memorandum of agreement, please also confirm my understanding as set out in this letter.

Yours very truly,

A. C. Contardi
District Sales Manager

/s
Attach.

Memorandum of Agreement Between Sheet Metal Workers, Local Union #28, and Carrier Air Conditioning Company

Subject: Carrier Dual Modulime Unit

1. Local Union #28 agrees to accept and install Carrier Dual Modulime Units as fabricated, tested and calibrated at Carrier's factory.

2. Carrier will promote this unit in conjunction with a perimeter dual duct or induction unit system.

3. Carrier will recommend to the customer when selling the Dual Modulime System, a medium pressure distribution supply duct and a return air system (finger return minimum).

4. Carrier will promote the unit so that the system will be designed using a header finger duct system rather than units in continuous lines.

5. Carrier will promote the system specifying Modulime units in the sheet metal section of the project specifications.

6. Dual Modulime Units will be delivered in single sections (48" or 60").

7. Units will be supported in accordance with New York City Code.

Local 28, SMWIA

Carrier Air Conditioning Company

operation. Units shall be arranged as shown in the drawings and shall include discharge collars, and grilles.

4- 12 MODULINE UNITS

a. Furnish and install 37AF Moduline Mark 5TM Weathermaster Air Terminals with required self-contained controls.

b. Where indicated on the drawings, appropriate accessories shall be provided to allow the base unit to function properly. In addition, dummy units and end trim strips shall be provided as required. Sufficient appurtenances such as T-bar mounting brackets, adjustable hanger packages, and diffuser alignment pieces shall be provided to properly support the base unit and any accessories in the ceiling.

c. Unit plenum section shall be constructed of (20-gage galvanized steel for 37AE units) (24-gage galvanized steel for 37AF units) with 1/2 inch coated acoustical thermal lining. Plenum length shall be a nominal 48 inches for 37AF units.

d. Unit bellows assembly shall consist of two neoprene bellows and a steel cutoff section with felt edges to reduce sound generation, all in a rigid support. Bellows shall be attached to a center diffuser plate assembly. Entire assembly shall be removable for service or inspection by unlatching spring clips.

e. Unit diffuser section shall be constructed of aluminum with a recoatable baked enamel of an off-white color. Exposed painted surfaces of diffusers shall be covered with strippable, protective film to be removed after installation.

f. Slave units shall include a control monitor and shall be readily convertible to a master control unit by accepting control accessories in a plug-in manner.

g. Controls shall be unit self-contained and suitable for operating with duct pressures between 2 and 6 in wg. A thermostat with control monitor and/or volume regulator shall be suitable for controlling up to five units. Each unit shall be capable of having controls installed or rearranged at any time.

h. Variable volume control - Where indicated on the drawings, slave units shall have a factory installed thermostat with control monitor and volume regulator powered by supply air duct pressure. The thermostat shall have an operating range between 65 F and 85 F with a throttling range not greater than ± 1.5F. The volume regulator shall be as described below.

i. If required units shall be supported from the Building structure at no extra cost to the owner.

APPENDIX X-1

CHARGE TO:
BMA 9-12 Floors Special 6455

DELIVER TO:
J.J. Hayden SB G

THE PRESBYTERIAN HOSPITAL
in the City of New York
622 WEST 168TH STREET NEW YORK, N. Y. 10032
PURCHASING DEPARTMENT – 627 WEST 165th STREET
TELEPHONE: 579-2844

Order No. C08059

TO
H. COHAN CONTRACTING CORP.
46-41 Vernon Blvd.
L.I.C., N.Y. 11101

149686

DATE 6/19/74

PLEASE SUPPLY THE FOLLOWING ARTICLES SUBJECT TO THE CONDITIONS GIVEN BELOW:

SHIP VIA Fob: Factory DELIVERY TERMS Net

ITEM NO.	QUANTITY	OUR CATALOG NO.	DESCRIPTION	PRICE
			Furnish all labor, material, equipment, etc. to do complete in all respects the HVAC Work as described in the Plans and Specifications prepared by Rogers, Butler and Burgun, Project No. 1400-10-14, The Presbyterian Hospital Record Memorandum dated February 14, 1974 and the Bid Form dated March 13, 1974 as amended by your letter dated May 23, 1974. All work is to be done complete for the sum of..... Attached is a list of contract drawings.	545,930.0

cc: A. Polucca
C. Fahr
H. Fine
G. Lumley
File

APPENDIX X-2

THE PRESBYTERIAN HOSPITAL
in the City of New York
at
COLUMBIA-PRESBYTERIAN MEDICAL CENTER
622 WEST 168TH STREET
NEW YORK, N. Y. 10032

EUGENE T. CLEARY
Administrative Assistant
Projects
Operation & Maintenance

February 27, 1975

Mr. G. Contardi
Carrier Air Conditioning Co.
385 Madison Avenue
New York, New York 10017

Dear Mr. Contardi:

Re: Babies Hospital Addition
9th, 10th, 11th and 12th Floors

As you requested, we have attached a copy of the certified drawings that have been forwarded to the mechanical contractor, H. Cohen, for the installation of the Carrier moduline units for this project. There has been no alternate to the Carrier units received or approved.

Very truly yours,

E. T. Cleary

ETC:vf
cc: Mr. M. J. Hayden

RECEIVED
R.B. & B.
JUN 19 1974

SUBMITTAL DATA

RECEIVED
JUN 2[illegible] 1974

ITEM	REV	DATE	DESCRIPTION
Form E-72 - Sheet 1		6-14-74	Moduline Unit Cooling Summary
Form E-72 - Sheet 2		"	" " "
37AF-202-1		"	Moduline Unit Dimensions
37AF-202-2		"	" "
37AE-203-4		"	Accessories

RECEIVED
JUN 25 1974
R. B. & B.

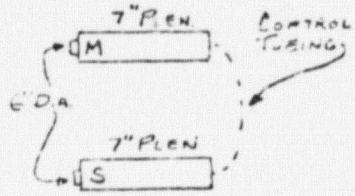
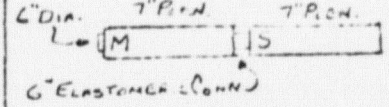
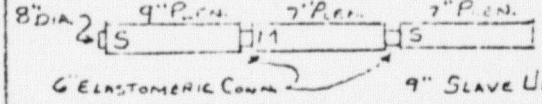
RECEIVED
JUN 19 1974

JOB NAME: BABIES HOSPITAL ADDITION
9-12 FLS, Presbyterian Hospital
Engineers: Meyer, Strong & Jones
Buyer: H. Cohan Contracting Corp.
Buyer P.O. No. 4092
Carrier Air Conditioning Co.
Job No. 4100D6024
Submittal Data: 6-17-74

Air Conditioning Company

A DIVISION OF CARRIER CORPORATION

MODULINE UNIT COUNT

	DIAGRAMMATIC VIEW OF ITEMS REQUIRED, DESCRIPTION, ORDERING NUMBERS ETC.	QUANTITIES REQUIRED 9TH FLOOR	10TH FLOOR	11TH FLOOR	12TH FLOOR	TOTALS
SINGLE UNIT	 No. OF SINGLE UNITS PER FL.	27	27	27	23	104
	7" MASTER UNIT - 37AF1148-B1C	20	20	20	18	78
	7" SLAVE UNIT - 37AF1142-D10	7	7	7	5	26
	CONTROL TUBING - LENGTH REQ'D.	50FT	50FT	50FT	40FT	190FT.
	TUBING MANIFOLD - NO. REQ'D.	14	14	14	10	52
	T-BAR MTG. BRKT - (2 PER UNIT)	54	54	54	46	208
GROUP OF TWO UNITS	 No. OF GROUPS OF TWO PER FL.	2	3	2	4	11
	7" MASTER UNIT - 37AF1148-B11	2	3	2	4	11
	7" SLAVE UNIT - 37AF1148-D10	2	3	2	4	11
	ALIGNMENT CLIP (2 PER JOINT, 2 PER GROUP)	4	6	4	8	22
	ELASTOMERIC CONN. (1 PER GROUP)	2	3	2	4	11
	CONNECTING TUBE (1 PER GROUP)	2	3	2	4	11
	TUBING MANIFOLD (2 PER GROUP)	4	6	4	8	22
	T-BAR MTG. BRKT. (2 PER UNIT, 4 PER GROUP)	8	12	8	16	44
GROUP OF THREE UNITS	 No OF GROUPS OF THREE/FL.	1	1	1	2	5
	9" SLAVE UNIT - 37AF1242-D21	1	1	1	2	5
	7" MASTER UNIT - 37AF1148-B11	1	1	1	2	5
	7" SLAVE UNIT - 37AF1143-D10	1	1	1	2	5
	ALIGNMENT CLIP - (2 PER JOINT, 4 PER GROUP)	4	4	4	8	20
	ELASTOMERIC CONN - (2 PER GROUP)	2	2	2	4	10
	CONNECTING TUBE - (2 PER GROUP)	2	2	2	4	10
	TUBING MANIFOLD - (4 PER GROUP)	4	4	4	8	20
	T-BAR MTG BRKTS (2 PER UNIT, 6 PER GROUP)	6	6	6	12	30

SEE SHEET 2 FOR NOTES

~~WOP~~ ~~O&E NO~~ Comm PO. 4072	SUBJECT EARLIER HOSPITAL	PREPARED BY [illegible]	SHEET 1 OF 2
JOB NO 410 CFA 624	MODULINE UNIT & NECESSITY COUNT	CHECKED BY	DATE 6-14

Air Conditioning Company

4 units installed

Summary Of Modline Units & Accessories

+ plans + spec. bulletin (2)

Package Number	Description	Total Quantity Required	Quantity Per Package	No. of Packages
37AF1148-B10	7" Master Unit - 6" Dia. Inlet, Plugged Outlet	78	1	78
" -B11	7" " " - 6" Dia. Inlet, 6" Dia. Outlet	16	1	16
" -D10	7" Slave Unit - 6" Dia. Inlet, Plugged Outlet	42	1	42
37AF1248-D21	9" Slave Unit - 8" Dia. Inlet, 6" Dia. Outlet	5	1	5
37AF-900-012	Diffuser Alignment Clip	42	100	1
-022	6" D.A. Elastomeric Collar & (2) Clamps.	21	25	1
37AE-900-592	Control Air Tubing	190 Ft	100 Ft.	2
-602	Interconnecting & Crossover Control Tube	21	100	1
-612	Tubing Manifold	94	100	1
-642	Mounting Bracket For Tee-Bar Ceiling	282	24	12

14 single units & 8 double units in plaster clgs

Notes For Sheets 1 & 2.

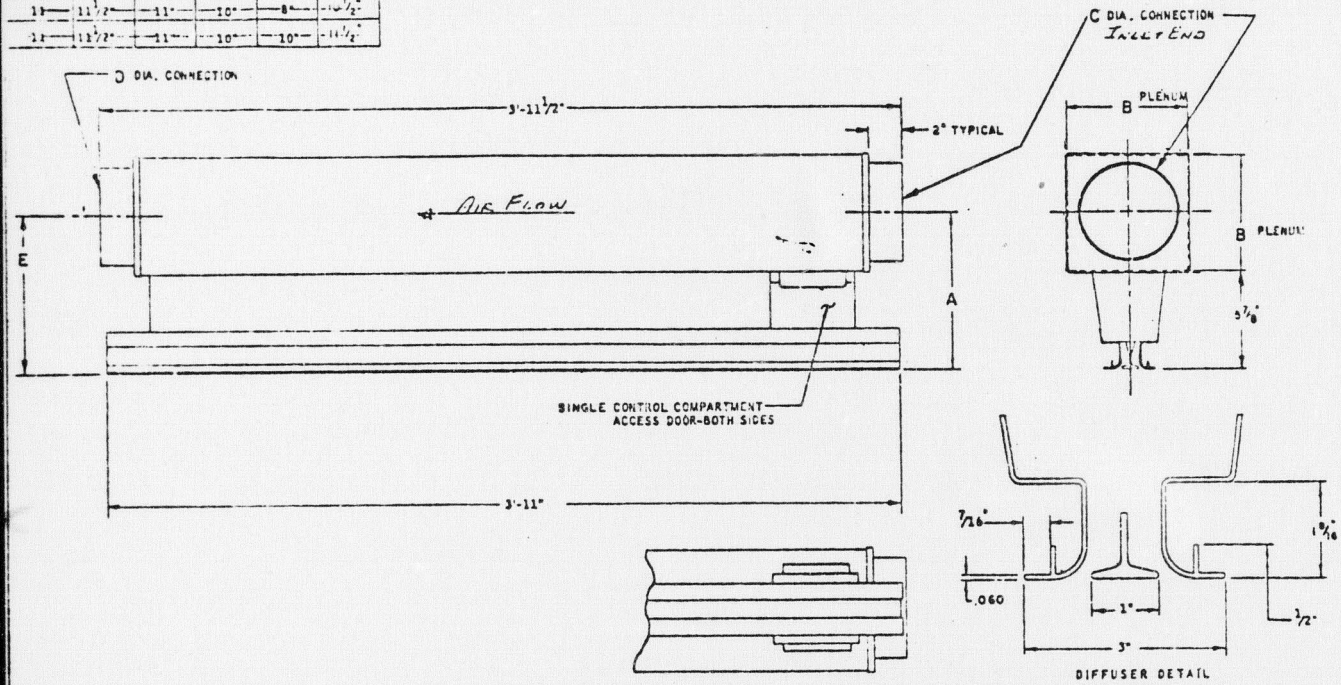
1. Accessory Count Is Based On The Assumption That All Units Are To Be Supported By Tee-Bar Ceiling.
2. Reference Dimension Drawings:
   37AF-202-1 - Units Used For Interconnection In Groups Of 2 or 3.
   37AF-202-2 - Units Used Singly, Or As Last Unit In A Group Of 2 or 3. On End Of Plenum Is Plugged.
   37AE-203-4 - Tee-Bar Mounting Brackets & Alignment Clips.

Job No. 4.Comm P.C. 4072	Subject Basic Hospital	Prepared By W.A.G.	Sheet No. 2 of 2
Dwg. No. 4IC cD6 c24	Modline Unit Summary And Notes.	Checked By	Date 6-14-7

ENGINEERING CALCULATIONS FORM E-72 (6-69)

CODE MO & OC

PLENUM SIZE (SQ.)	A	B	C	D	E	PACKAGE No.	DESCRIPTION	No. REQD.
7	9 1/2"	7"	6"	6"	9 1/2"	37AF 1148-B11	MASTER UNIT	16
9	10 1/2"	9"	8"	6"	9 1/2"	37AF 1248-D21	SLAVE UNIT	5
9	10 1/2"	9"	8"	8"	10 1/2"			
11	11 1/2"	11"	10"	8"	10 1/2"			
12	11 1/2"	11"	10"	10"	11 1/2"			



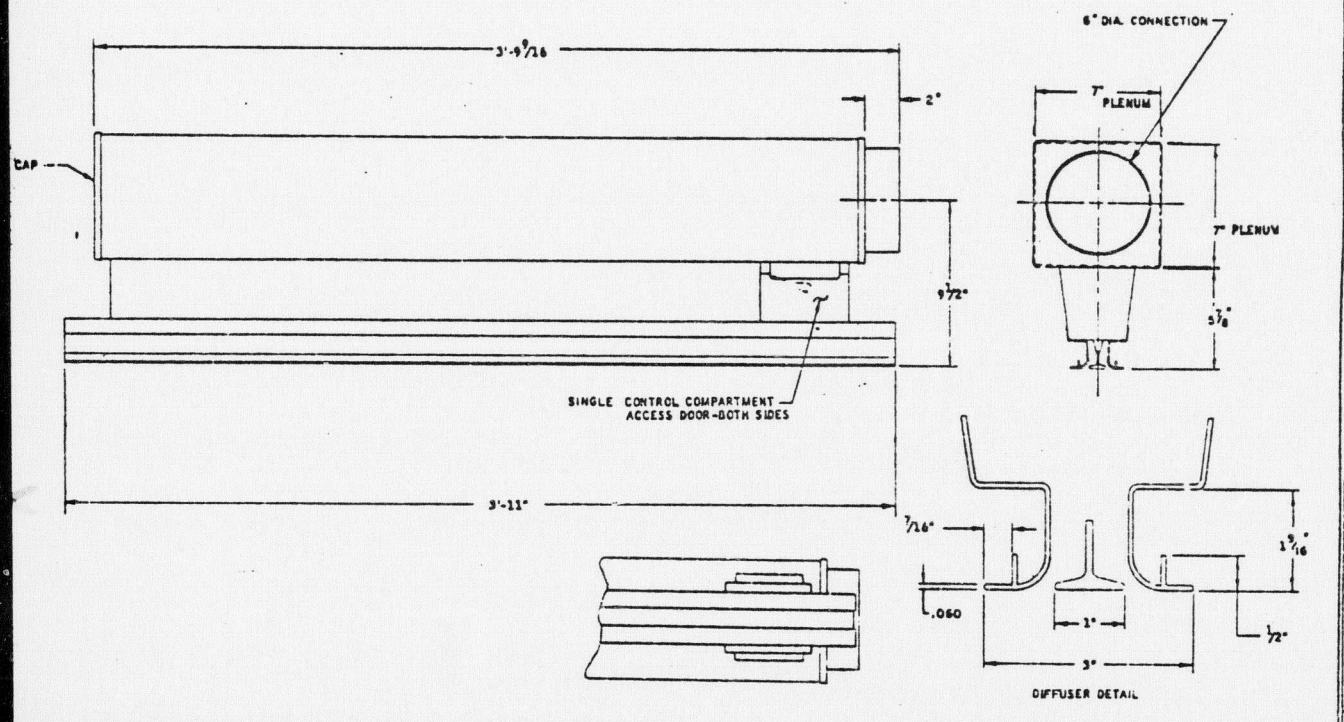
DIFFUSER DETAIL

JOB NAME Babies Hospital
JOB LOCATION Newburgh N.Y.
BUYER H. Colman Co. Inc. Cin. O.
BUYER NO 4012 CARRIER NO 37AF1148-B11
DIMENSIONS CERTIFIED BY [illegible] DATE 6-14-72

DATE 9/1/72 | SUPERSEDING | MODULINE AIR TERMINAL | 37AF-202-1 | REV

Carrier
CARRIER AIR CONDITIONING COMPANY

37AF



PACKAGE No. 37AF 1148-B10 7" MASTER UNIT (78) REQUIRED.
37AF 1148-D10 7" SLAVE UNIT (42) REQUIRED

JOB NAME BABIES HOSPITAL
JOB LOCATION NEW YORK, N.Y.
BUYER H. COHN CONTRACTING CO. INC.
BUYER NO. 4072 CARRIER NO. 410 CCC. 24
DIMENSIONS CERTIFIED BY [illegible] DATE 6-14-71

DATE 6/21/72	SUPERSEDES	MODULINE AIR TERMINAL (PLENUM SIZE 7)	37AF-202-2	REV

Carrier

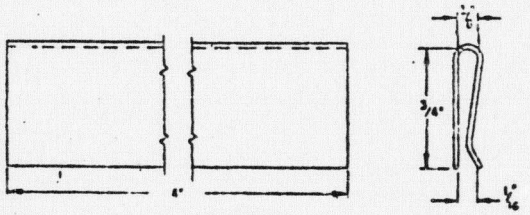
37AF

CODE - NO B OC . CATALOG NO. 503 - 782

DIFFUSER ALIGNMENT CLIP

TWO CLIPS ARE REQUIRED WHENEVER UNITS ARE INTERCONNECTED.

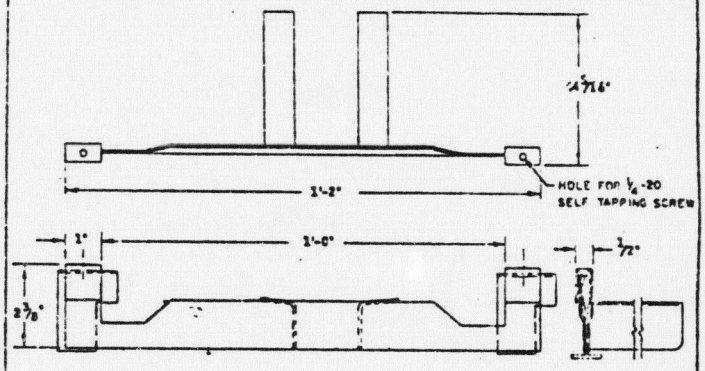
PKG NO. 37AF 900-012 (100 CLIPS PER PKG.)



TEE BAR MOUNTING BRACKET

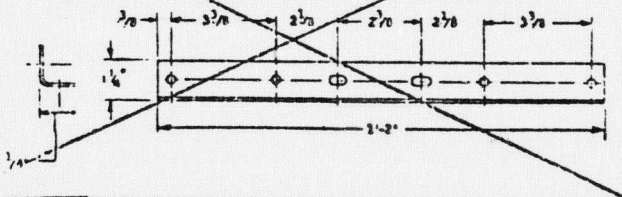
TWO ARE REQUIRED FOR EACH UNIT.

PKG. NO. 37AE 900-642 (24 BRKTS. PER PKG.)

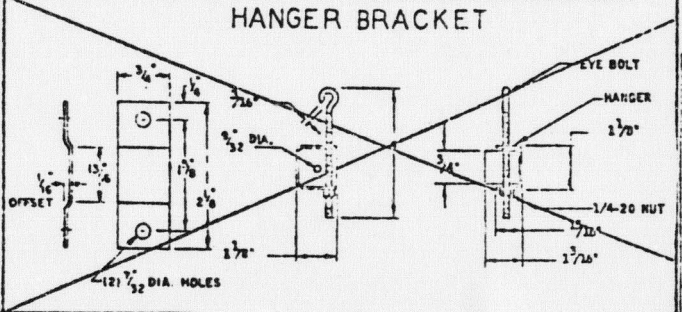


ACCESSORY HANGER PACKAGE

SET INCLUDES: HANGER ANGLE, EYE BOLTS, NUTS 1/4-20 & SCREWS #10



HANGER BRACKET



JOB NAME Babies Hospital

JOB LOCATION New York, N.Y.

BUYER H. Cohan Contracting Corp.

BUYER NO. Hall CARRIER NO. 42 ODC 0241

DIMENSIONS CERTIFIED BY [illegible] DATE 6-14-71

ITE	SUPERSEDES	MODULINE WEATHERMASTER ACCESSORIES PLENUM ATTACHMENTS	37AE-203-4	REV.
9-5-73	9-1-72			A

Carrier

37AE

128

ROGERS, BUTLER & BURGUN
ARCHITECTS ONE PARK AVE. N.Y.C.

☐ – IN GENERAL CONFORMANCE WITH DESIGN.

☐ – GENERAL CONFORMANCE WITH DESIGN SUBJECT TO NOTATIONS.

☐ – RESUBMIT

☐ – NOT APPROVED FOR NON-CONFORMANCE WITH DESIGN.

PROJECT NO.	CHECKED BY	SUBMISSION
1400-10-14	[illegible]	NO. 1
ARCHITECT'S FILE NO.	DATE RETURNED	
15A-13	6/27/74	

CONTRACTOR SHALL CO-ORDINATE ALL TRADES AND CHECK DIMENSIONS AGAINST FIELD CONDITIONS.

PRESBYTERIAN HOSPITAL
M & C DEPT.
FILE NO. 15A-13

[illegible]
APP'VD AS NOTED ✓
[illegible]

RESUBMIT	DATE RETURNED	CHECKED BY
— COPIES	7-1-74	W.S.M.

DRAWING CHECKED FOR DESIGN AND GENERAL ARRANGEMENT ONLY AND IS SUBJECT TO CONTRACT DOCUMENTS. APPROVAL STILL REQUIRES THE CONTRACTOR TO CO-ORDINATE WITH ALL TRADES AND TO CHECK DIMENSIONS AGAINST FIELD CONDITIONS.

APPROVED

[illegible]

APPROVED AS CORRECTED, RESUBMIT

REVISE AND RESUBMIT

NOT APPROVED

Approval does not relieve the contractor of responsibility for compliance with the requirements of the contract documents. Contractor is responsible for dimensions to be confirmed and correlated at the job site; for information that pertains solely to the fabrication processes or to techniques of construction; and for coordination of the work of all trades.

MEYER STRONG AND JONES, P.C.

Date 6/21/74 By [signature]

APPENDIX AA

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION

LOCAL UNION NO. 28 OF NEW YORK CITY

1790 Broadway
at 53th St.
NEAR COLUMBUS CIRCLE
20th Floor
New York, N.Y. 10019

Union Office
Phone (212) 541-6200

Fund's Office
Phone (212) 541-6300

AFFILIATED
N.Y. State AFL & CIO
•
N.Y. State Building and Construction Trades Council
•
Building and Construction Trades Council of Greater N.Y.
•
N.Y. City Central Labor Council AFL & CIO

UNITY
CRAFTSMANSHIP
BROTHERHOOD

EDWARD STACK
PRESIDENT • HARRY J. RUECKERT
FIN. SEC'Y-TREAS. • EDWARD J. O'REILLY
RECORDING SECRETAR

March 21, 1975

General Sheet Metal Works, Inc.
434 East 165th Street
Bronx, New York 10456

Attention: Mr. Morris Lipka
President

Gentlemen:

This is to confirm the full settlement of the grievance filed by Local 28 against your firm with the Joint Adjustment Board, by letter dated November 7, 1974, regarding the fabrication of the plenum in connection with the Carrier Dual Moduline unit at the Presbyterian Medical Center, Babies Hospital, at 168th Street and Broadway, New York City, by your payment for the loss of man hours of work to the Local 28 Sick Dues Relief Fund of the sum of $2,153.60, on the basis of 160 hours at the rate of $13.46 per hour, in accordance with the Resolution submitted by Local 28 at the hearing on this matter before the JAB on March 7, 1975, a copy of which is attached hereto.

A counterpart of this letter will be filed with the JAB as a memorandum of the disposition of the subject grievance.

Very truly yours,

EDWARD STACK
President

ES/fl
opeiu/153

GENERAL COUNSEL'S EXHIBIT 3

TRANSCRIBED ABSTRACT OF MINUTES OF LOCAL 28
EXECUTIVE BOARD MEETING
October 11, 1972

On Modiline (sic) Units

Order of busines (sic). The following borthers appeared before the E.B. They presented an evauliation (sic) on the Carrier Modiline (sic) Vairiable (sic) Volume Unit. They were Howie Bretz IA 148985 Richard Berman IA 233994 William Connolly IA 246820. They presented a presentation and a slide picture of the work involved in this seystem (sic). The E.B. fully discussed the new moduline system and further meetings will be held on this system.

Approved at Union Membership Meeting, October 19, 1972

GENERAL COUNSEL'S EXHIBIT 4

TRANSCRIBED ABSTRACT OF MINUTES OF LOCAL 28
EXECUTIVE BOARD MEETING
November 21, 1972

On Modiline (sic) Units

The review and Research Committe (sic) appeared before the E.B. they were Mickey Connolly IA 246820, Howard Bretz IA 148985 and Richard Berman IA 233994. at this time a complete reveiw (sic) of the proposal was made by the E.B. and a final desisun (sic) will be put off until the special meetng (sic) of the E.B. on Wed. Dec 6, 1972.

Approved at Union Membership Meeting, December 21. 1972

GENERAL COUNSEL'S EXHIBIT 5

TRANSCRIBED ABSTRACT OF MINUTES OF LOCAL 28
EXECUTIVE BOARD MEETING
December 6, 1972

On Modiline (sic) Units

The E.B. discussed this Moduline Unit and decided that the fabrication of duct work for this unit by others than LU 28 Journeymen was a violation of Addendum "B"

Approved at Union Membership Meeting, December 21, 1972

GENERAL COUNSEL'S EXHIBIT 6

TRANSCRIBED ABSTRACT OF MINUTES OF LOCAL 28
EXECUTIVE BOARD MEETING
May 30, 1973 and June 5, 1973

The industry review and research committe (sic) represented by Brother Howard Bretz IA 148985 and Brother Richard Berman IA 233994 appeared before the E.B. and it was noted that the late Mickey Connolly the 3rd member of this committe (sic) became deceased since the last meeting. The Bus. Mgr Dan Pasquinucci asked this comittee (sic) to present the facts reguarding (sic) the limited use of the variable Dual moduline Mixing (sic) Box on (2) specific jobs that are in the engineering design stage the New U.N. office and apartment tower Building and the Lehman college Building. The committee recommends to the E.B. the following resolution.

RESOLVED, that as a limited pilot project for investigative purposes only, the Association and Union jointly conduct an evaluation study of the use of variable volume boxes to determine the impact and effect thereof on the employment of journeymen and apprentice sheet metal workers covered by our Collective Bargaining Agreement, and related matters, and it is further

RESOLVED, that such study be expressly limited to the use of variable volume boxes:

(a) in conjunction with a perimeter dual duct or a duction unit system with enclosures. a medium pressure distribution supply duct and a return air system (finger return minimum);

(b) which are delivered in single sections (48" or 60") with all related accessories loose for field assembly by journeymen sheet metal workers; and

(c) which will be supported independently of ceiling construction; and it is further

RESOLVED, that the aforesaid study and the use of variable boxes thereunder include and are confined to the _____ and _____ job sites; and it is further

RESOLVED, that this resolution, the subject matter thereof and the study undertaken in pursuance thereto does not and shall not in any manner or for any purposes represent, constitute, be deeded, or considered a precedent for any purposes whatsoever.

A motion was duly made and seconded that no allowance in C.B.A. at all be made to allow the dual Moduline Mixing Box in the New York city area. On this motion the E.B. adopted this motion. On the resolution--allowing a limited piolet (sic) project of (2) jobs the U.N. Tower and the Lehman college Building a motion was duly made and seconded to adopt this resolution. The E.B. voted on this proposal and this proposal was rejected.

Upon a motion duly made and seconded the E.B. minutes were

adopted on the minuts (sic) a qustion (sic) was raised on the adoptor (sic) of the rejection of the limited use on (2) jobs of the varible (sic) volume boxes. A full discussion was had on this subject. The chairman then called for a vote. The vote upheld the recommendation of the E.B.

Approved at Union Membership Meeting, June 21, 1973

GENERAL COUNSEL'S EXHIBIT 14

SHEET METAL INDUSTRY
Council of New York City

420 LEXINGTON AVENUE NEW YORK, N. Y. 10017
(212) 532-2627

EXECUTIVE DIRECTOR
LAWRENCE STURGIS
BOARD OF TRUSTEES
FRED MUNDER
JOHN J. FLANNERY, P.E.
STEVEN KLEBANOFF
ROBERT ZAERLING
HARRY SUNA
SEYMOUR J. ZWERLING

February 1, 1973

To the Board of Trustees:

For the past several months this office has undertaken a close study of Variable Volume Systems and their relation to the sheet metal contractor.

The conclusion reached is consistent with the Recommendation made by the Local Union #28 report which is attached. In fact, the attached report was written for the Sheet Metal Industry Research and Review Committee by this office.

Variable Volume Systems contain the means by which two of our most important aspirations can be achieved:

1. The sheet metal and air handling contractor becomes the dominant mechanical trade on the project.

2. Being in a position where "separation of contracts" becomes a realistic and practical bid procedure.

Experience with HVAC systems has led me to conclude (with the exception of residential and hotel construction) that most designs bottom out at pretty much the same cost-per-ton regardless of the design used. My approach has been to try and get as much of that cost-per-ton into the air handling section as possible.

The Variable Volume system provides the largest ratio of this cost-per-ton to the sheet metal contractor of any system on the market with the possible exception of dual duct systems. However, in addition to providing more contract work, it utilizes principles of energy conservation by providing only the amounts of air necessary to satisfy the comfort conditions in a given area.

Presently, there is research being developed that would make it mandatory in N.Y.C. for each large project to provide an Inpact Study to determine if the owner is providing the means necessary to conserve energy, protect the enviornment, etc.

One of the proposals being discussed by Polytechnic Institute of Brooklyn, (leaders of the research team) is to require that mechanical consultants design buildings using systems such as Variable Volume because it does conserve energy.

On another front, I interviewed two large sheet metal contractors at a recent SMACNA-New York State meeting on January 18, 1973 about their experience with Variable Volume. Fran Lombardi of Joseph Cashier Co. in Syracuse, expressed overwhelming approval because it lessened coordination problems, contained all medium pressure duct construction, reduced dependency on a mechanical contractor who, he claims, was in the Mechanical Equipment Room only and enabled the Cashier Co. to do over 80% of purchase of air handling system. John Lopinsky, President of the Levi Case Co. in Albany had a similar experience and went as far as insisting that a current Variable Volume system be a separate contract. He was successful in separating one contract and took the prime contract in another, subcontracting the piping.

Also, there are many sales engineering firms and sales representatives who have avoided promotion of Variable Volume because of their inability to control production and deliver a pre-tested unit that the manufacturer can guarantee.

There are some problems with this system. First of all, some contractors who have made boxes for variable volume systems would lose shop fabrication in New York City.

However, the man hours and additional work included in the Variable Volume System more than offsets this loss. There is also a problem with Local #28 relinquishing the manufacture of the box that is attached to the unit. Nell Farrel's original position was that the box must be made by members of Local #28. There has been a shift in this position recently and now most officials in Local #28 agree generally that Variable Volume units should be brought in as a complete unit.

There are two ways this can be accomplished. Since variable volume units are not a part of any existing agreement, we could, by common consent, merely allow the marketing of these systems as they do in other areas. Or, through the Joint Adjustment Board, specify in written agreement, approval of the system.

As you know, the design of systems take a long time before becoming projects out for bid. More important is the timing of this issue. At present we have many factors going for us and it is important to take advantage of the "cause" as well as the benefit to our industry. I would like to encourage several engineers who are contemplating Variable Volume system on their projects. One engineer indicated that he would seriously consider Variable Volume if he could have the assurance that the manufacturer would supply the complete unit to the sheet metal contractor on the job.

Please read the attached report for additional advantages of Variable Volume Systems so that we may discuss it more fully at the next trustees meeting.

Sincerely,

Larry Stuart

GENERAL COUNSEL'S EXHIBIT 17

THREE BORO SHEET METAL AND VENTILATING CO., INC.
HEATING • VENTILATING • AIR CONDITIONING

11 WYTHE AVENUE
BROOKLYN, N. Y. 11211
212 - 387-2709

REGISTERED MAIL
RETURN RECEIPT REQUESTED

February 21, 1974

Acme Climate Control Corp.
49 Purchase Street
Rye, New York 10580

Att: Mr. Joseph Reyes

Re: Van Etten Drug Treatment
Program - Bronx, N.Y.
Our Job #73-50

Gentlemen:

This letter is in reply to your registered letter dated 2/15/74, which we received on 2/19/74, informing us that the Carrier Moduline Units will be ready for shipment to the job site one day during the week of 2/18 thru 2/22/74.

In regard to your statement in which you indicated that you have been trying to reach us by phone, I wish to point out to you that our office was in contact with your office on 2/14 & 2/15/74, in request for payment for our requisition for the above project and also the project at J.F.K. Airport.

Please refer to our proposal (copy attached) dated October 8, 1973, in which we had taken "exception to the handling and installation of the plenums for the moduline units (supply outlets)" which is in conformance with our signed contract agreement with the local union.

Therefore, our apprehension is not in receiving a complete shipment as stated in your letter, but that these units have been shipped with plenums which is not in our proposal.

Cont'd

February 21, 1974

Re: Van Etten Drug Treatment
Program - Bronx, N.Y.
Our Job #73-50

We conclude that you had accepted our proposal in total, due to the fact that you had directed us (verbally with a purchase order to follow) to proceed with our work which had commenced on 10/9/73.

To confirm the above, please note that your purchase order was dated December 6, 1973.

Very truly yours,

THREE BORO SHEET METAL &
VENTILATING CO., INC.

Alfred G. Wonesh

AGW/ek
Encl.

GENERAL COUNSEL'S EXHIBIT 18

ACME CLIMATE CONTROL CORPORATION
AIR CONDITIONING CONTRACTORS & ENGINEERS
49 PURCHASE STREET, RYE, N. Y. 10580
TEL. 914 967-4700 212 231-1200

February 25, 1974

Three Boro Sheet Metal & Ventilating Co., Inc.
11 Wythe Avenue
Brooklyn, New York 11211

Att: Al Wonesh

RE: Van Etten Drug Treatment
Program, Bronx, N.Y.

Gentlemen:

This letter is in answer to your letter dated Feb. 21, 1974. As per our phone conversation on Feb. 22, 1974 it is our understanding that all differences have been resolved between Local 28 and Carrier Corporation in so far as the installation of Carrier Moduline units for the above job.

Based on this agreement you have agreed to proceed with the installation of these units with the plenums as received from Carrier and we can disregard paragraph three in your letter of Feb. 21, 1974.

Very truly yours,

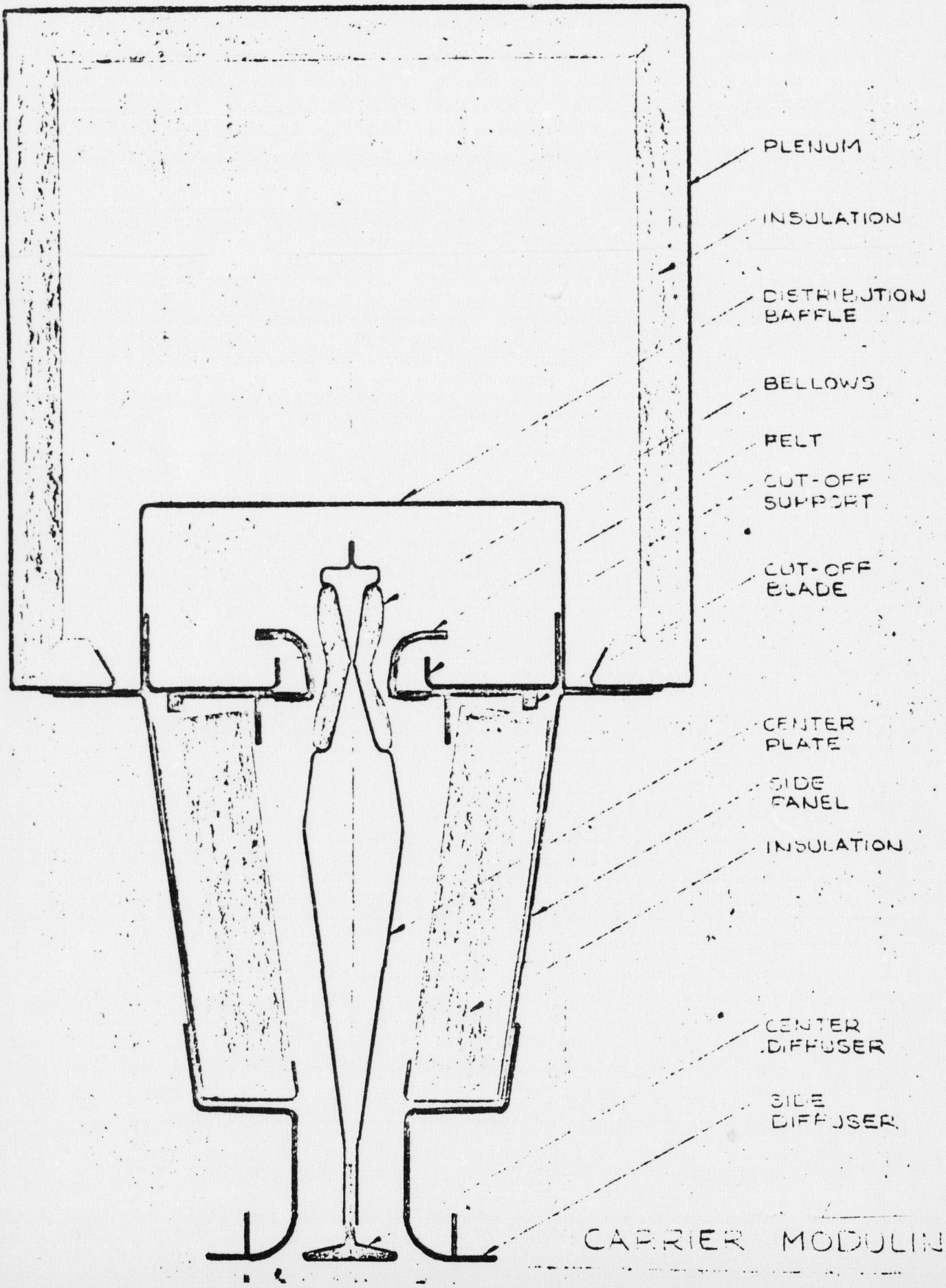
ACME CLIMATE CONTROL CORP.

Marcia Tyson

CERTIFIED

MT/mw

GENERAL COUNSEL'S EXHIBIT 19



CARRIER MODULINE

GENERAL COUNSEL'S EXHIBIT 20

Stipulation

It is hereby stipulated and agreed that, immediately following the March 7, 1975, meeting of the Joint Adjustment Board referred to in the stipulation set out at pages 610 and 611 of the transcript of this proceeding, Morris Lipka, president of General Sheet Metal Works, Inc., instructed members of Local 28 employed by General Sheet Metal Works, Inc., on the Babies Hospital Addition to cease installation of Carrier 37AF Moduline units at that job; that installation of such units thereupon ceased; that on or about March 17, 1975, Mr. Lipka met with Edward Stack, president of Local 28, and advised Mr. Stack that General Sheet Metal Works, Inc., would pay the sum of $2,153.60 to the Local 28 Sick Dues Relief Fund as set out in Local 28's proposed resolution (GC 2, Ap. BB); that Mr. Stack advised Mr. Lipka that the charges filed against General Sheet Metal Works, Inc. (GC 2, Ap. AA) would be "settled"; that, on or about March 20, 1975, General Sheet Metal Works, Inc., paid $2,153.60 to the Local 28 Sick Dues Relief Fund and resumed installation of the aforesaid units; and that on or about March 21, 1975, Mr. Stack wrote the letter to General Sheet Metal Works, Inc., which is attached hereto and made a part hereof. Counsel for the Respondent stipulates to the facts as set out herein but not to the relevancy or materiality of said facts.

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION

LOCAL UNION NO. 28 OF NEW YORK CITY

1790 Broadway
at 58th St.
NEAR COLUMBUS CIRCLE
20th Floor
New York, N.Y. 10019

Union Office
Phone (212) 541-6200

Fund's Office
Phone (212) 541-6300

AFFILIATED
N.Y. State AFL & CIO
•
N.Y. State Building and Construction Trades Council
•
Building and Construction Trades Council of Greater N.Y.
•
N.Y. City Central Labor Council AFL & CIO

UNITY
CRAFTSMANSHIP
BROTHERHOOD

145 FIN. SEC'T-TREAS. RECORDING SECRETARY

November 7, 1974

Sheet Metal and Air Conditioning Contractors
National Association/New York City Chapter, Inc.
420 Lexington Avenue
New York, N. Y. 10017

Attention: William Rothberg, Esq.
Executive Director

Gentlemen:

Sheet Metal Workers International Association, Local Uni No. 28, hereby files a grievance against General Sheet Metal Works, Inc., charging that GENERAL is in violation of our Collective Bargaining Agreement, Addendum "B", Part II, last unnumbered paragraph, by permitting and/or accepting work covered by our Agreement--fabrication of plenums--involving the Carrier Dual Moduline Unit, for installation at the Presbyterian Medical Center, Babies Hospital, (168th Street and Broadway, New York City) to be performed by persons who are not within the bargainin unit covered by our Agreement, rather than by its journe man and apprentice sheet metal workers.

This violation has caused and will continue to cause the covered employees monetary losses for which reasonable compensation is sought based upon the loss of manhours of work.

We request that this matter be heard and determined by tl Joint Adjustment Board as soon as possible.

Very truly yours,

EDWARD STACK
President

ES/fl
opeiu/153

cc. General Sheet Metal Works, Inc.
434 East 165th Street
Bronx, New York 10456

Attn: Mr. Morris Lipka

RESOLUTION by Local 28 (Transcribed)

11/14/74

RESOLVED, that General Sheet Metal Works, Inc. is in violation of our Collective Bargaining Agreement, Addendum "B," Part II, last unnumbered paragraph, by permitting and/or accepting work covered by our Agreement - fabrication of plenums - involving the Carrier Dual Moduline Unit, for installation at the Presbyterian Medical Center, Babies Hospital (168th Street and Broadway, New York City) to be performed by persons who are not within the bargaining unit covered by our Agreement, rather than by its journeymen and apprentice sheet metal workers, and by neglecting, failing and/or refusing to require, provide and/or arrange that said work be so performed, and it is further

RESOLVED, that General Sheet Metal Works, Inc. make payment of the sum of $2153.60 to the Local 28 Sick Dues Relief Fund, representing the loss of man hours caused by GENERAL's said violation on the basis of 160 hours at the rate of $13.46 per hour.

RESPONDENT'S EXHIBIT 4

WARM AIR HEATING VENTILATING • AIR CONDITIONING SYSTEMS

TRIANGLE SHEET METAL WORKS INC.

SINCE 1917

Contractors and Manufacturers

212-343-8700
516-354-6568

115 NEW HYDE PARK ROAD • NEW HYDE PARK, L. I., N. Y. 11041

In reply refer
72-Sept-118

September 27, 1972

Carrier Air Conditioning Co.
385 Madison Avenue
New York, New York 10017

Attention: Mr. Philip Venturino

Re: Moduline Units -
New Police Headquarters
Our Job No. 3 - P.O. No. 5576

Gentlemen:

This will confirm discussion at meeting held at the New Police Headquarters building on September 26, 1972 concerning deficiencies in the Carrier Moduline units. The following people were in attendance:

Philip Venturino - Carrier Corporation
Brendan McKenna - Carrier Corporation
John Greves - Meridian Engineering
Marvin Shaw - Jarcho
Mike Rotolo - Triangle Sheet Metal
Charles Zwerling - Triangle Sheet Metal

At this meeting we demonstrated a pressure test that we had previously performed on several Moduline units to determine if the units would operate properly. The results of this test indicated several deficiencies in the construction of the Moduline unit. The deficiencies noted were as follows:

1. Insulation would have to be removed at the point where the half inch hole was cut into the plenum to allow for a proper fit between the plenum and the unit.

2. The edge of the Moduline unit needs to be strengthened at the point where the control is mounted. Two additional screws are necessary to correct this condition.

(Continued....)

TRIANGLE SHEET METAL WORKS, INC.
SINCE 1917
Contractors and Manufacturers

3. Our inspection shows that a certain number of units were fabricated with double thickness mounting flanges. This type of flange will cause a hardship to us during the installation due to the improper fit when attached to the plenum.

4. The pressure test demonstration revealed that excessive air leakage occurred at three different points. Air was noticed to be leaking through each of the four (4) nuts which are welded to the sides at each end. This leakage appeared to create a disturbing noise level. Air was found to be leaking through the connecting seams where the flange is attached to the air discharge plate, and it was also leaking through the side edges that are formed by these two components. This leakage also produced an undesirable noise level.

At the conclusion of the meeting, two units and one plenum were given to Mr. McKenna to be sent to the Carrier Corporation for further study and testing. One of these units was constructed with the double thickness mounting flange. We further informed the Carrier representatives of the urgency in checking out the problems since the City officials have been exerting great pressure on us to proceed immediately with the installation of these units on the 8th and 9th floors. Therefore, we would appreciate it if Carrier would send us a formal report as soon as possible on the results of their tests and also indicate to us how they intend to correct any deficiencies found.

Very truly yours,

TRIANGLE SHEET METAL WORKS, INC.

Charles Zwerling

Charles Zwerling
Vice President

CZ:mjs
cc: Mr. Robert Wall - Jarcho

RESPONDENT'S EXHIBIT 5

Permagum sealant

October 4, 1972

Triangle Sheet Metal Works, Inc.
115 New Hyde Park Road
New Hyde Park, L.I., New York 11041

Attention: Mr. C. Zwerling

Subject: Moduline Units
New Police Headquarters

Gentlemen:

During an on-site job meeting, two Carrier Moduline units were tested after being connected to the plenums as manufactured by Triangle. It was found that in order to properly fit the moduline unit onto the plenum, the unit had to be stretched across the width. This in turn caused a separation of the seams internal to the unit which resulted in air leakage. In order to obtain a solution to this problem, two units along with two plenums were taken to Carrier's plant where they were inspected and tested. After Carrier's own investigation of this problem, the following corrective measure is proposed:

Before connecting the moduline unit to the plenum, a bead of sealer is to be placed along the entire length of two exposed seams located on the top side of the unit. When the unit is placed on the plenum and if separation occurs, the sealer will immediately close it thus preventing leakage. The sealer being proposed for this job is 3M Duct Sealer 800.

Carrier will supply the sealer and the application tool. However, Carrier will not accept any backcharges resulting from labor.

Very truly yours,

Philip T. Venturino
Machinery & Systems Division

PTV/lmp

RESPONDENT'S EXHIBIT 6

October 5, 1972

Triangle Sheet Metal Works, Inc.
115 New Hyde Park Road
New Hyde Park, L. I., New York 11041

Attention: Mr. Charles Zwerling

Subject: Moduline Units
New Police Headquarters
Carrier Job No. 0100E8031

Gentlemen:

This is in reply to your letter of September 27th regarding the four questions you had in connection with the Carrier Moduline unit.

1. We assumed that when the hole was drilled the insulation back of the hole would be cut away. In any event, the unit can work with the insulation in or with the insulation removed.

2. You indicate the Moduline unit needed to be strengthened at the point where the control is mounted by addition of two (2) screws. This is not new and it is our understanding that you were advised that this had to be done when our Syracuse representative was on the job some time ago.

3. We admit that certain of the units do have double thickness mounting flanges and this was caused by the City's insistence that all mounting flanges be painted after many of them were delivered to the job. Accordingly, in order to meet the job requirements at the time, this arrangement was arrived at to expedite the fix. This over-lay in no way makes mounting more difficult.

4. The units were fabricated in accordance with the certified drawings which were furnished and approved. The outside dimension is 1". This leakage which occurred on the two (2) units tested was caused by the units being forced over the plenum made by Triangle. As pointed out to you by Carrier representatives we feel that this is beyond our control and not our responsibility. However, in order to cooperate we had recommended the fix outlined in Mr. Venturino's letter of October 4, 1972. NUTS, LEARNT

As a matter of record, the two (2) units which were brought to the Carrier office were taken to Syracuse by car on Sunday night by Messrs. McKenna and Bellemo and set up in the testing laboratory on Monday. We had an answer by Tuesday which was passed on to you verbally and in writing on October 4th.

In my opinion, any further delay is not the responsibility of Carrier Air Conditioning Company.

Very truly yours,

A. C. Contardi
District Sales Manager

frz

151

RESPONDENT'S EXHIBIT 7

WARM AIR HEATING VENTILATING · AIR CONDITIONING SYSTEMS

TRIANGLE SHEET METAL WORKS INC.

SINCE 1917

Contractors and Manufacturers

OCT 13 1972

212-343-8700
516-354-6568

115 NEW HYDE PARK ROAD · NEW HYDE PARK, L. I., N. Y. 11041

In reply refer
72-OCT-49

October 9, 1972

Carrier Air Conditioning Company
385 Madison Avenue
New York, New York 10017

Attention: Mr. A. C. Contardi,
District Sales Manager

Re: Moduline Units - Police Headquarters,
Carrier Job No. 0100E6031
Our Job No. 3

Gentlemen:

This is in reply to your letter of October 5, 1972.

With respect to paragraph 2 of your letter:

You are correct in telling us that we had been informed recently that the Moduline units would require additional screws at the end in order to seal the unit to the plenum. It is true this is not new, but this is something that did not show on the original contract drawings and therefore the absence of proper mounting by Carrier is going to incur additional costs for us for which Carrier will have to reimburse us. We estimate the cost of attaching these additional attachments in the field to be $1.50 per unit.

With respect to paragraph 3 of your letter:

The additional mounting flanges do not create a problem in the installation of these units as it is not possible to fit the moduline units to the plenums in many cases due to the fact that the inner flange of the double flange prohibits pulling the moduline up to the plenum. We estimate our additional cost to be $1.50 per unit.

With respect to paragraph 4 of your letter:

I am sure you are aware of the fact that the only method of attaching supply duct drawings of the plenums that were fabricated by us were approved by Carrier. The leakage that is occurring cannot be caused by the problem that you refer to in your letter because the difference in dimensions is far less than the ordinary manufacturing tolerances in this kind of work. The problem that we have is being caused plainly and simply

fabrication of plenum - always straight sided plenums

K-7

TRIANGLE SHEET METAL WORKS, INC.
Contractors and Manufacturers

72-(;T-49 -2- October 9, 1972

because the moduline unit leak between the mounting flanges and were not fabricated in accordance with the original samples that were tested at your Syracuse plant. On the units that were tested at Syracuse the nut holes were all filled with EC 800.

We really do not know any way to correct this without considerable expense to Carrier and therefore we are advising you that the moduline units as delivered to the jobsite are not satisfactory and that they have internal leaks. The leakage has nothing to do with the plenums that the modulines are connected to.

We want you to make the moduline internally tight so that they do not leak. If the method to be used is to be done at the jobsite, as you have verbally outlined, and if you wish us to do it we have estimated that the cost of doing this work will be $4.50 per unit.

Please give us your decision on the above and if you want us to do all the corrective work send your confirmation for us to do it.

If you wish to take these back to the plant to make them airtight at the plant, of course the choice would be yours.

Very truly yours,

TRIANGLE SHEET METAL WORKS, INC.

Charles Zwerling

Charles Zwerling
Vice President

jc

3780 units x $7.00 = $26,400

RECEIVED
OCT 11 1972
C. A. C.

RESPONDENT'S EXHIBIT 8

COPY

BRANCH OFFICE

October 23, 1972

Triangle Sheet Metal Works, Inc.
115 New Hyde Park Road
New Hyde Park, N.Y. 11040

Attention: Mr. C. Zwerling

Subject: Police Office Bldg.

Gentlemen:

This is to confirm the decision that were reached at our jobsite meeting of October 19, 1972.

The first item is the correction of leaks (both those associated with manufacturing and those that may occur as a result of variations in the plenum width). The procedure to use is as follows; Immediately preceeding the installation of each unit to the plenum, the foam insulation strip on each end of the unit must be peeled back. Apply EC-800 with an applicator to both seams to within ½" of the end of each unit and press the foam insulation back into place. It is important that this procedure be followed at the time each unit is installed to allow the sealer to flow into the seam, should the seam be spread open when mounting to the plenum.

Secondly, two additional screws are required at the control end of each unit to insure a leak-free installation in that area.

The third item discussed, was the additional difficulty encountered in installing the units that were returned to the factory for painting. The additional painted strip makes it difficult to insure that the unit is properly mounted to the plenum and it will be necessary to pre-scribe a line on the plenum, or take some additional precautions during mounting to insure correct installation.

BRANCH OFFICE

Triangle Sheet Metal Works, Inc. October 23, 1972

It was noticed that several of the plenums as mounted in the ceiling, had high spots at each corner as a result of the welding process during fabrication. These corners must be checked and buffed where required to insure freedom of leaks in that area.

It was agreed at the meeting that Carrier would supply the sealer and applicator and would provide a few days supervision to initially insure that the above procedures were being properly followed. In addition, it was agreed the additional work required in items one thru three would be performed for the sum of Ten Thousand Dollars ($10,000.00) Triangle Sheet Metal will bill Carrier directly for this work.

Thank you for your cooperation in this matter and should you have any additional questions, please do not hesitate to contact our office.

Very truly yours,

CARRIER AIR CONDITIONING COMPANY

L. Sturzenberger
District Service Manager
Machinery & System Division

cc: A. Contardi
A. Petosa
P. Venturino
M. Bellomo
D. Fragnito

THIS COPY FOR

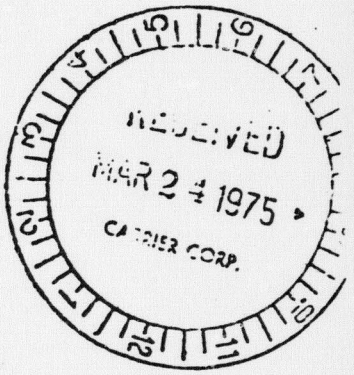
CHARGING PARTY'S EXHIBIT 1

General Sheet Metal Works, Inc.

434 East 165th Street · Bronx, N.Y. 10456 · LUdlow 5-1771

AIR CONDITIONING · VENTILATING · INDUSTRIAL SHEET METAL

March 20, 1975



Carrier Corporation
385 Madison Avenue
New York, New York

Att: Mr. Gus Contardi

Dear Gus:

Enclosed please find a copy of check sent to Local 28 as per our agreement.

Very truly yours,

GENERAL SHEET METAL WORKS, INC.

Morris Lipka, President

ML:js
encl.

DATE		AMOUNT	
TOTAL OF INVOICES			
less ___ % DISCOUNT			
less			
TOTAL DEDUCTIONS			
AMOUNT OF CHECK			

GENERAL SHEET METAL WORKS INC.
434 EAST 165TH STREET
BRONX, N. Y. 10456

31894

3-20 19 75 1-103/210

PAY TO THE ORDER OF Sick Dues Relief Fund, Local 28 $2,153 60/XX

THE SUM 2153 DOLS 60 CTS DOLLARS

BANKERS TRUST COMPANY
3855 THIRD AVENUE
BRONX, N. Y. 10457

34

Morris Lipka

⑈031894⑈ ⑆021001038⑆ 034⑈402617 75⑈

CHARGING PARTY'S EXHIBIT 2

General Sheet Metal Works, Inc.

Ventilation
Air Conditioning
Industrial Sheet Metal

Carrier Corporation
365 Madison Avenue
New York, New York

434 EAST 165th STREET
BRONX 56, N. Y.
589 - 1771

Re: Babies Hospital
Broadway & 167th St., NYC
Our job # 159..

Date 3-17-75

Invoice No. 3629

TERMS:

For services rendered as per meeting held at Carrier's offices on Friday, March 14th, 1975...	2153 60 2,150. 00	2153 60 $ 2,150. 00

Please pay
Acc't
3/25/75

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Second Region

In the Matter of:	:	
SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL 28, AFL-CIO	:	
-and-	:	
CARRIER AIR CONDITIONING COMPANY A DIVISION OF CARRIER CORPORATION, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 28, AFL-CIO	:	Case No.
	:	2-CC-1296
-and-	:	
CARRIER AIR CONDITIONING COMPANY A DIVISION OF CARRIER CORPORATION	:	2-CE-66
-and-	:	
THREE BORO SHEET METAL	:	

26 Federal Plaza
New York, New York
Monday, March 10, 1975

The above-entitled matter came on for hearing, pursuant to notice, at 11:00 A.M.

BEFORE:

JAMES V. CONSTANTINE — Administrative Law Judge

APPEARANCES:

RAYMOND P. GREEN, ESQ. — 26 Federal Plaza, New York, New York, appearing on behalf of the General Counsel

1A	1	SOL BOGEN, ESQ.	One Penn Plaza, New York, New York, appearing on behalf of Sheet Metal Workers International Association, Local 28, AFL-CIO
	2		
	3		
	4	KENNETH C. MCGUINESS, ESQ. -and-	1747 Pennsylvania Avenue, Washington, D.C., 20006,
	5	ROBERT E. WILLIAMS, ESQ.	appearing on behalf of Carrier Air Conditioning Company
	6		
	7	WILLIAM ROTHBERG, ESQ.	Rosenthal & Goldhaber, Esqs., 48 Court Street, Brooklyn,
	8		New York, appearing on behalf
	9		of Sheet Metal Air Conditioning Contractors National Association, N.Y. Chapter, Inc.
	10		

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MR. GREEN: At this time I would like to introduce General Counsel's Exhibit 1A through S.

JUDGE CONSTANTINE: Show it to the other lawyers in the case, please.

MR. BOGEN: Your Honor, on behalf of the respondent I have already reviewed it and I am prepared to stipulate to General Counsel's Exhibit A through S.

MR. MCGUINESS: Charging Party has no objection.

MR. ROTHBERG: No objection.

JUDGE CONSTANTINE: In that case, received in evidence, Ms. Reporter.

(The above-mentioned documents were marked General Counsel's Exhibit 1A through 1S in evidence.)

MR. GREEN: Consistent with General Counsel's Exhibit 10, consisting of a notice of intention to amend complaint dated December 19, 1974, I now move to amend the complaint as indicated in the notice of intention to amend.

JUDGE CONSTANTINE: If there is no objection, I will hear you.

MR. BOGEN: We have no objection with respect to the notice to amend or counsel for the General Counsel proceeding to amend, consistent to that. We simply want the opportunity to interpose our answer with respect to each of the answers. We did not prepare the written document.

JUDGE CONSTANTINE: You intend to defy it at this time, you may do it orally. You do not have to do it in writing unless you insist.

MR. BOGEN: I do not insist and I wish to go through each of the paragraphs.

JUDGE CONSTANTINE: Go ahead.

First of all, in the absence of objection, that motion is granted. Now at this time you may interpose your answer to that, instead of having a written answer, you may do it orally on the record.

MR. BOGEN: There will be two numberings I refer to. One is the numbers that appear in the notice of intention

to amend. There are a second series of numbers which appear on the paragraphing. So the record will be as clear as possible, I want to describe that.

With respect to paragraph number one in the notice of intention, respondent admits number 1A, which refers to 17A of the complaint. 17B, 17C, 17D.

With respect to paragraph 17E, appearing in a modified or amended form on page two of the notice, respondent denies the allegations set forth in that sub-paragraph and respectfully refers Your Honor to the documents mentioned in that paragraph, which speaks for themselves.

Respondent denies paragraph or sub-paragraph 17, sub-paragraph 17G.

With respect to paragraph two --

JUDGE CONSTANTINE: Of the motion?

MR. BOGEN: Of the notice of intention to amend, referring to paragraph 20 of the complaint.

Respondent denies paragraph 20A, 20B.

With respect to paragraph 3 of the notice of intention, amending paragraph 23 of the complaint, respondent denies amended paragraph 23.

With respect to paragraph 4 of the notice of intent to amend, amending paragraph 26 of the complaint, respondent denies paragraph 26 as amended.

With regard to paragraph 5 of the notice of intention to amend, amending paragraph 7 of the complaint, respondent denies paragraph 27 as amended.

JUDGE CONSTANTINE: I heard you say 7. You meant 27?

MR. BOGEN: 27.

With respect to paragraph 6 of the notice of intention, referring to a new paragraph 28 of the complaint, respondent denies said new paragraph 28.

MR. GREEN: Your Honor, at this time I would like to introduce into evidence as General Counsel's Exhibit 2, a looseleaf folder which contains an index, a stipulation of fact and a variety of documentary evidence, groups of papers as General Counsel's Exhibit 2. Those representing facts which the parties agree, either occurred or which are evidenced by the various documents.

The stipulation does not waive any parties'right to object to the facts and terms of materiality or whatever.

* * * * *

JUDGE CONSTANTINE: I want to be sure to get your position, Mr. Green. You are not offering it as evidence of an unfair labor practice, but as background. Because, if it were evidence of an unfair labor practice, I think it falls outside the limitation period.

As background, I will admit it and overrule Mr. Bogen's objection.

MR. GREEN: Fine.

JUDGE CONSTANTINE: I want to make it clear I am not admitting it on the merits, only as background.

(The above-mentioned documents were marked General Counsel's Exhibit 2 in evidence.)

* * * * *

MR. GREEN: We have some more documents which General Counsel would like to make in the way of stipulation.

As General Counsel Exhibit 3, I would offer minutes of Local 23's Executive Board, dated October 11, 1972.

MR. BOGEN: No objection, your Honor.

JUDGE CONSTANTINE: Since there is no objection, I will receive that in evidence.

MR. BOGEN: The format actually, what is involved, if your Honor will look at the documents for a moment, the minutes were produced at the request of the investa-gatory stages thereafter, pursuant to a subpoena, were taken in longhand in a bound book that borders on the illegible. Counsel for the General Counsel, I and I believe, Mr. McGuiness, agreed that they were mostly illegible. We undertook to transcribe them will all of

52 1 the errors, the warts and everything exactly as they
2 were and the document you have before you is a transcrip-
3 tion types of those minutes. We have agreed that they
4 are accurate, as best we can determine their legibility.
5 JUDGE CONSTANTINE: In the absence of an objection,
6 they are received in evidence.
7 (Document marked General
8 Counsel Exhibit 3 in evidence,
9 this date.)
10 MR. GREEN: There is the initials E. B. Can we
11 stipulate that that is Executive Board?
12 MR. MCGUINESS: Yes.
13 MR. BOGEN: Yes.
14 JUDGE CONSTANTINE: The stipulation is received.
15 MR. GREEN: As Exhibit 4, minutes of the Executive
16 Board dated November 21, 1972.
17 MR. BOGEN: So stipulated.
18 MR. MC GUINESS: So stipulated.
19 JUDGE CONSTANTINE: Received in evidence in the
20 absence of objection.
21 (Document marked General
22 Counsel Exhibit 4 in evidence,
23 this date.)
24 MR. GREEN: As General Counsel Exhibit 5 I would offer
25 in evidence minutes of Executive Board Local 28, December 6,

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1972.

JUDGE CONSTANTINE: Mr. Bogen?

MR. MC GUINESS: No objection.

JUDGE CONSTANTINE: Received in the absence of objection.

(Document marked General Counsel Exhibit 5 in evidence, this date.)

MR. GREEN: General Counsel offers as General Counsel Exhibit 6, minutes of Local 28 Executive Board, dated May 30, 1973 consisting of three pages.

MR. BOGEN: No objection.

MR. MC GUINESS: No objection.

JUDGE CONSTANTINE: Received in evidence in the absence of objection.

(Document marked General Counsel Exhibit 6 in evidence, this date.)

MR. GREEN: As General Counsel Exhibit 7, I would offer by way of stipulation a brochure which is entitled Carrier New Generation of Variable Air Volume Moduline.

* * * * *

BEST COPY AVAILABLE

JUDGE CONSTANTINE: In the absence of objection GC7 is received in evidence.

(Document marked General Counsel Exhibit 7 in evidence, this date.)

* * * * *

A. C. CONTARDI

was called as a witness and having first been duly sworn by Judge Constantine, was examined and testified as follows:

JUDGE CONSTANTINE: Will you be good enough to give your name and address?

THE WITNESS: A. C. Contardi, address is 8 Midland Gardens, Bronxville, New York.

JUDGE CONSTANTINE: Please be seated.

DIRECT EXAMINATION

Q (By Mr. Green) Mr. Contardi, by whom are you employed?

A Carrier Air Conditioning.

Q For how long have you been employed by that company?

A 38 years.

Q What is your current job?

A Currently I am district manager for the HSD Division in New York City, which covers metropolitan New York.

Q What is HSD Division?

A Machinery and Systems Division.

Q Before that did you hold a different type of job?

A Yes, I started in research for about six months and then into the service and construction division and ultimately managed northeastern construction until 1948, thereabouts.

In '48 I shifted, went over into sales and I sold heavy equipment in this area until 1959, when I took over as manager.

Q What is basically your current duties and responsibilities?

A I manage -- I am responsible for the New York office and the New Jersey office of Carrier, all the sales and engineering functions per se, that we carry on in New York City, all of Long Island, Westchester County and

58 New Jersey, west of Trenton.

MR. BOGEN: At this time, your Honor, I have no objection with respect to any question on what has transpired, but after the preliminary background material, I notice there are some other people in the room who may be called.

I don't know if they are counsel's witnesses. I would like to know whether or not they will also be

witnesses. If so, I ask that they be sequestered.

JUDGE CONSTANTINE: You make a motion that they be sequestered?

MR. BOGEN: I don't know if they are witnesses.

MR. GREEN: They are.

MR. BOGEN: I ask that they be sequestered.

JUDGE CONSTANTINE: I usually grant those motions, but I allow one witness to be in the room. You may have one and they may have one.

MR. BOGEN: Mr. Contardi is the principal involved in this situation. The other people, I don't know who they are and I have a strong objection to any of them sitting through this.

JUDGE CONSTANTINE: All right.

All persons who are going to be witnesses in this case, please leave the room until you are called. The room is barren of anyone you may want? I say you may have one person in the room, Mr. Green may have, Mr. Contardi, after Contardi leaves the stand.

Q Do you hold any professional degrees, Mr. Contardi?

A Yes, I am an engineer by degree, Bachelor of Science in electrical engineering, out of Rutgers, '36.

Q Will you please describe the nature of the business carried on by Carrier Air Conditioning Company?

A Carrier Air Conditioning, the division I am in, primarily operates in the construction and engineering phases.

We work with architects, engineers, owners, to help in the design of equipment, naturally, so that we like other competitors, get our equipment specified.

Q What kind of equipment are you talking about?

A Well, we make refrigeration, heating, air conditioning terminals, which is the product in question, fans, the entire line of air conditioning.

* * * * *

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JUDGE CONSTANTINE: Go ahead.

Q I would like you to describe how the Carrier air-conditioning units are marketed. How you go about doing it.

A Our salesmen -- our sales engineers -- we don't call them salesmen -- they call on these architects, these engineers, these owners.

Naturally, they work with them and try to get, as part of the specifications, this equipment that we are talking about.

Normally, maybe I shouldn't do it, but I will do it, normally an owner decides to build a building and he

retains an architect. The architect is given so many dollars to build a building within the -- an architect gets an assignment to build a building within the dollars that an owner has to spend and to fit the scope that the owner needs it for.

The architect normally picks a mechanical engineer that he works with to design the mechanical portion of the building.

We work with these people in the design of this equipment.

Q When you say these people, who are you talking about?

A The engineers that are selected. Occasionally the architect. So that our equipment is part of the design, included in the specifications and hopefully, in a good position in the specifications, so that when the job is bid by the owner through general contractors, we will get a fair chance to bid competitively.

MR. BOGEN: Your Honor, I ask that the answer be stricken as being non-responsive to the question.

MR. GREEN: I don't think that it's non-responsive. It's my question.

JUDGE CONSTANTINE: I am not sure it is or is not responsive. I don't see the necessity for all this, not according to the complaint.

MR. GREEN: We are trying to find out now what the machines are. This will become very apparent as we go along, in this particular case.

JUDGE CONSTANTINE: I will sustain the objection.

* * * * *

MR. BOGEN: Yes, involving the telephone company.

Q In relation to marketing these units, can you tell me whether or not your company would deal with architects, engineers, owners, as opposed to contractors or vice versa?

A After the job is bid, naturally the contractors bid the job and the contractors bid on the specifications which have been prepared by these other people.

At that point we deal with the contractor, in order to sell them the equipment, which meets the specifications, which is part of the design.

Q What is the 37P unit? Describe what that is.

A The 37C is a Moduline device. It's a terminal device which controls the air, which varies the volume of the air, which is discharged into the room.

MR. BOGEN: I don't mean to interrupt the witness. We have physically produced the item and it's standing outside the room. I looked around before and I thought

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one of our people would come back to bring it in.

At this time I would like to physically produce the item. I would be able to follow the description of it much better.

JUDGE CONSTANTINE: Ask Mr. Green. He will have to decide.

Do you want that physical object in here?

MR. GREEN: I have no objection to it being placed in the corner, if we have room.

JUDGE CONSTANTINE: Bring it in.

Q I refer you to General Counsel Exhibit 2, Appendix A, and ask you what that particular unit is.

A This is the Carrier 37P unit.

Q I would like you to tell me what that unit does, what it is designed to do.

A It's located -- it's the unit through which -- it's a terminal device located through which air is passed into the room, it has a complete system of controls, whichmodulate the volume of the air,as determined by the temperature in the room.

Q Where are those units placed in the room?

A In the ceiling.

Q What portion of the unit would be showing if it were placed in a room?

A Just the lower portion, the lower portion here.

64 1 Everything else would be above the ceiling height.
2 Q You will notice on the unit or the picture of
3 the unit, it seems to be in two separate parts.
4 Would you describe what each of those parts would
5 be?
6 A The upper portion is the plennum area, and the
7 lower portion is the portion that contains the distribut-
8 ing plennum and the controls and the bellows, so that
9 you can regulate the amount of the air.
10 Q Let me refer you to Appendix B of General Counsel
11 Exhibit 2, and also to General Counsel Exhibit 7.
12 In conjunction with these particular documents --
13 JUDGE CONSTANTINE: That is 7 you are showing him?
14 MR. GREEN: Yes, and Appendix B.
15 JUDGE CONSTANTINE: I would like you to describe
16 the 37A model units.
17 A The 37A unit is a unit that has -- that discharges --
18 it's what we call a dual Moduline. It's a dual regulating
19 device. It has the ability to discharge and vary the air
20 volume coming into the room through two slots, each
21 controlled separately.
22 The 37P, which we looked at previously, can only --
23 has one set of controls. The slots cannot be controlled
24 separately.
25 Q Where would these units be placed in a room, for

example?

A In the ceiling.

Q Which portion would be showing, if you can show us now?

A Everything above that line would be in the ceiling.

MR. BOGEN: I don't know what Mr. Contardi is referring to specifically. If he marked it, and I request that it be marked, Mr. Green, would you consider marking it?

THE WITNESS: All right. Better yet —

Q You are referring to Appendix 3?

A Yes. Everything from this point on is above. Everything from there above is in the ceiling.

MR. GREEN: It's on Page 6.

MR. BOGEN: Exhibit A?

MR. GREEN: Appendix B.

Q Does this 37A unit differ in any respects, in terms of function, from the 37P unit?

A The function is the same with the exception that you have the ability to control two separate air streams into the room, whereas with the P, you can only control one -- you can control them both through one set of controls.

Q Looking at the 37A unit, can you tell us and describe where the control portions are and where the

66 plennum portions are?

A This is the plennum portion right here.

Q You mean the outside?

A Yes, the control portion is in this section right here. I can show you right here, if you want.

Q Would you, please?

MR. BOGEN: Would the record indicate that two physical units have been brought into the room and I don't know how we can mark them, frankly, physically, so that the record can continue on.

First of all, can we have them deemed marked, sir?

JUDGE CONSTANTINE: You want them as your exhibits?

MR. BOGEN: Yes, at this particular time. I offer them as Respondent's Exhibits A and B.

JUDGE CONSTANTINE: I am going to rule that you are doing that but I am not going to make it the responsibility of the reporter to take care of them. These are huge exhibits. It's your responsibility to see that they get to the Board or to me, at the close of the case. I'm not going to put that responsibility on the reporter.

They will be received in evidence as Respondent's 1 and 2.

MR. GREEN: It's really one.

JUDGE CONSTANTINE: Is that one exhibit there?

THE WITNESS: Yes.

JUDGE CONSTANTINE: Respondent's 1, then.

(Document marked Respondent's Exhibit 1 in evidence, this date.)

A This is the plennum section, this is the section that has the controls, these are the controls, the modulator bellows, is located the full length of the unit inside on both sides and air comes through a baffle plate, out through the bellows assembly, it comes out and is discharged in the room through these two slots.

You can butt a partition here and you can control each slot separately through one control -- one control controls one side and the other controls the other.

Q Is there a central source of air?

A Right through here.

Q Does it come from someplace else?

A Air is produced at a main apparatus where it's treated and duty modified or humidified and discharged through this unit.

Q With respect to these units, the 37A and 37A series, are these covered by patents?

A Yes, they are covered by 24 patents.

Q Are they different or the same as other kinds of air conditioning units, commercial air conditioning units, in other use, other than these?

68 1 A I'm not sure of that question. I'm hesitating.
2 Q Are these other types of units used in commercial
3 buildings?
4 A Yes, there are.
5 Q Maybe you can tell us in what way these kinds of
6 units, in terms of their function, would differ from
7 the other type of units?
8 A We say they are unique because they completely self-
9 contain. The controls and everything are furnished as
10 you see it there. Most of the others do not have that
11 feature.
12 Q When you talk about variable volume, what do you
13 mean by that?
14 A It's the control of the volume of air which is
15 supplied to the room. If you are supplying for a hundred
16 CFM to maintain a design condition at a peak day, 95
17 degrees and the termperature drops outside to 90, you can
18 do it with less air. This will throttle that air back
19 without any external help.
20 Q You mean a change or external help in terms of the
21 amount of energy used?
22 A It will cut back on the volume you supply, yes.
23 Q How long has Carrier been manufacturing the 37P
24 unit and selling it to the public or consumers?
25 A Originally units were produced in 1963.

JUDGE CONSTANTINE: '60 what?

THE WITNESS: '60.

JUDGE CONSTANTINE: Please keep your voice up.

Q Was that for the market or inhouse?

A They were produced for the market but we didn't get around to them here until later than that.

Q When did Carrier begin marketing for sale the 37P units? About when?

A Shortly thereafter.

Q How long has Carrier -- talking about the 37A unit for a moment -- when did that unit begin to be manufactured and sold in this country?

A 1970.

Q Is Carrier still manufacturing the 37P unit, still selling it?

A Yes, we are making 37P units, 37A and others of the family.

Q Where are the 37A and 37P units actually manufactured?

A Tyler, Texas.

Q Is that a plant or factory?

A It's a production plant, yes, in which we make this type of equipment and other types, but this is one of the main items made there.

Q Are the employees of the Tyler, Texas plant represented by any labor organization?

70 1 A Yes.

MR. BOGEN: Objection.

JUDGE CONSTANTINE: Why is that an issue?

MR. GREEN: I want to show that they are represented by a sister union. It does become relevant, you will see, when this witness talks to some of respondent's people.

MR. BOGEN: The complaint doesn't remotely involve anything that Mr. Green has suggested either for the purpose of the answer or —

JUDGE CONSTANTINE: I don't see its relevance. You may make an offer of proof.

MR. GREEN: I guess I will do it by question and answer.

JUDGE CONSTANTINE: No, you will do it by narrative form.

MR. GREEN: Since 1968 the National Labor Relations Board, pursuant to elections, certified that employees employed by Carrier at its Tyler, Texas plant is represented by International Sheet Workers Local 527. That's my offer of proof.

JUDGE CONSTANTINE: All right.

MR. BOGEN: I assume, your Honor, by that you sustain my objection to the question?

JUDGE CONSTANTINE: I sustained it but he is entitled to make an offer of proof.

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MR. BOGEN: I didn't hear the ruling, your Honor. Excuse me.

Q In terms of selling the 37A and 37P units, where does Carrier sell these units?

MR. BOGEN: Objection.

JUDGE CONSTANTINE: I don't quite see that it's relevant. The fact is, there's a particular area in your complaint. You want to go outside that area?

MR. GREEN: You mean geographic area?

JUDGE CONSTANTINE: Yes, I am going by the complaint now.

MR. GREEN: I am saying that this situation in New York is unique because only in New York has a sheet metal union made efforts to bar Carrier from marketing these systems in New York.

MR. BOGEN: I object to that. There is nothing in the record about barring or not barring.

MR. GREEN: We hadn't gotten to that.

MR. BOGEN: There is nothing about barring or not barring in the complaint. I ask that that be stricken.

JUDGE CONSTANTINE: He is explaining why he is offering it. I can't strike that. I think it goes beyond the complaint. The complaint only has to do with the New York area. I don't care what they do in the rest of the country.

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MR. GREEN: I think the Supreme Court might.

JUDGE CONSTANTINE: Maybe so. You make an offer of proof.

MR. GREEN: Carrier markets and sells both the Carrier 37A and 37P units throughout the country and indeed the world,as is.

In other words, the way they are manufactured in Tyler, Texas, prefabricated.

* * * * *

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MR. GREEN: We will not stipulate to that.

Q With respect to the 37P unit, did there come a time when Carrier attempted to market these units in New York City?

A Yes.

Q When did that occur?

A 1966, '67.

Q At that time did you play a part in that decision, were your privy to that decision?

A Yes, I was in the same job at the time. A product like this, you don't move into an area overnight. We started to make them in '63. We wondered about the New York market. We got to work with some people and

we knew there would be some coming in. So, in November of '66 we asked for a meeting with the then president of the local, Mr. Farrell.

Q What local are you talking about?

A Local 28.

Q Do you know his first name?

A Mel Farrell.

Q That occurred in November?

A In November we asked and he came up to our office and he met -- he came with a Mr. Mulhearn, who was then an official of the local, too, and they visited in our office and met with myself and Mr. Giannini, who was the zone manager at the time and we showed them the 37P unit, as we then made them.

Q Where did that meeting take place? Where is your office?

A Our office is at 335 Madison Avenue; it was on the 9th floor of that building in Giannini's office.

Q You are asying you showed him the unit? Did you have a unit you physically presented to Mr. Farrell?

A We showed it to him, he handled it, examined it.

Q I would like you to tell me what was said during that particular conversation and who said what to whom?

* * * * *

Q I would like you to tell us what was said at that meeting.

A Mel examined the unit, so did Mulhearn. They chatted amongst themselves and then they said to Giannini and I that the unit, as they saw it there, could not come into New York.

Q Did they say --

A Mel suggested that the so-called plennum section should be made in New York and if we would agree to do that, then the unit could come in. By made in New York, he meant a New York shop, a Local 28 affiliated shop, and so stated, incidentally.

Q You talked about the plennum section. Is that the section you described before?

A Yes. That is the upper section, the plennum section of the unit, the four-sided section, as he called it, above the unit.

Q You are talking about the 37P?

A 37P, yes. There was no A at that time.

* * * * *

Q At the time of this conversation with Mr. Farrell, did Carrier have any orders for the 37P units in New York City?

A We had on the books from August of '66 an order for 600 units for the Presbyterian Hospital, the contractor, my memory says, was Wolff & Menier, the engineer was Meyer, Strong & Jones.

In addition, we were in the throws of redesigning the 8th floor of the building we are located in, in which we -- which we lease, and that was going to be a 37P unit.

We had, in effect, two jobs on the book.

Q One which was the Carrier home office?

A Yes, 8th floor.

Q What is the name of the hospital?

A Presbyterian Hospital.

Q With respect to the Carrier home office, did there come a time that the 37P units were delivered to that office?

A Yes, on the 4th of January of '67.

Q Could you tell me who was the contractor involved at that time?

A Buensod, Stacey.

Q Who did that contractor have a contract with?

MR. BOGEN: Objection, your Honor. This is a historic background, supposing.

JUDGE CONSTANTINE: I will allow it. It's still on the question of history. I do not allow it on any other ground because it goes long outside and far beyond the (10b).

Q With whom did Buensod, Stacey have a contract at that time?

A We gave them an order to install that system.

Q When you say we --

A Carrier Corporation.

Q At the time of delivery or after the time of delivery, did you speak to or see a representative of Local 28, with respect to that delivery?

A On the 5th of January, Frank Weigel, who was the business agent handling that part of the city was at the jobsite and looked at the units.

Q How did he call you? On the phone?

A On the phone, and asked me -- he knew about the meeting we had --

* * * * *

Please answer.

A Frank Weigel asked me if I knew the units were on the job. I said I did. He asked me what had been settled when Farrell visited us in November. I said had not been any settlement, there had been a discussion.

I said that Farrell -- I repeated what Farrel had told us for him, which I'm sure he knew --

Q Just tell me what you said to him.

A I told him Farrell had suggested that the plennum section be made in a New York City shop and this had been passed on to Syracuse and we had decided that we were not going to go along with Farrell's suggestion.

Q What, if anything, did he say?

A He said he would talk to Farrel and get back to me.

Q Did you speak with Mr. Weigel again?

A Well --

JUDGE CONSTANTINE: Yes or no?

THE WITNESS: No. Not that -- not until he was with Farrell.

Q When was that?

A On the 6th. Farrell and Weigel --

Q Excuse me. The 6th of what month?

A January of '67.

Farrell and Weigel --

JUDGE CONSTANTINE: You have to wait for questions. You have answered the question.

Q Would you tell us where you met with Mr. Farrell and Mr. Weigel on the 6th?

A They visited the job, the 8th floor. When they got on the job the called and asked us to come down.

Q Did you meet with both of those gentlemen?

A On the job.

Q Where did you meet them?

A On the construction floor, the 8th floor of 384 Madison Avenue building.

Q Was anybody else present during that discussion?

A Frank Weigel, Gus Cantori, Bill Alexander and a fellow by the name of Shattel.

Q Who was that other fellow you talked about?

(Requested portion of record read.)

Q I would like you to describe what was said at that time, who said what to whom.

MR. BOGEN: I object to this, your Honor.

JUDGE CONSTANTINE: I will allow it as part of the history.

You may answer the question.

A Farrell pointed out that the unit, as it stood on the floor, and he had it in his hand and was holding it, could not be installed, the lower section would have to be made in New York in a Local 28 shop.

In fact, he suggested that Carrier turn over to a local shop a die, so that the different fuser plate could be made locally and the plennum section also made locally.

Q When you say the different fuser plate, what are you referring to?

A You would have to look at the unit. The air that comes into that plennum passes through the different fuser plate, before it comes out of the outlet.

Q What is a die?

A It's a defuse you would use in a press, so that all of these plates would be made uniformly.

Q Do you recall anything else being said at this particular time?

A There was reference made at the time that units were going to be delivered the next day by the supervisor on the job and Farrell told them to unload them, that this would be ultimately settled. That was one thing that was said.

He criticized Buensod, Stacey for taking the order, handling this type of equipment, that they shouldn't have taken it before consulting with him.

Q When you say him --

A Mr. Farrell, they shouldn't have done it.

Q Do you recall anything else being said?

* * * * *

A I do recall one other thing. We were members of the Mechanical Contractors Association at the time. He said that the unit could not be installed again. I said, "Mel, you know what your recourse is. Bring us up on charges." I remember that distinctly now. I didn't think of it.

Q What was the Mechanical Contractors Association?

A The Mechanical Contractors Association was and still is a group of mechanical contractors that are members of the building trade.

Q And deal with whom?

A Mechanical contractors and also other members of the building trades.

Q Do they have contracts with unions?

A Yes, they sign -- they did sign at that time an agreement with 638, that's the steamfitters, and also

with 28.

Q Is your company at this point in time a member of that association?

A Yes.

Q Does that association at this point in time have any contracts with Local 28?

A No.

Q When did that change?

A '69.

Q Did you attend or were you brought up on charges within the MCA?

A Yes, We were asked to attend a meeting on the 12th, I think it was, of January, which we attended.

Q Where was that?

A It was held at the Building Trade Employers Association, 711 Third Avenue, it was before the Joint Trade Board, which was made up of sheet metal contractors, mechanical contractors and union members.

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Q Did you attend that meeting?

A I attended and our counsel, Walter Iles, attended.

Q Did any members of Local 28 attend that meeting?

A Yes.

Q Who were those?

A Of course I remember Mr. Farrell, I don't remember the names of the others, but it's a matter of record.

Q I would like you to tell me, as best you can recall, what was said at that meeting and who said it.

A Well, to outline the charge that we were bringing in this unit, which was contrary to this agreement.

Q When you say the --

A Farrell outlined the charge. Then he asked me where the unit was made. I told him the unit was made in Tyler, Texas. He kind of looked at me and said, "I didn't think you would admit to that."

I said, "Mel, why not?"

He reached in his pocket and he had gone to the trouble of obtainina a waybill number, covering a shipment from Tyler to our office building.

He said, "You know Tyler, Texas is a non-union shop," and it was at the time.

He said, "For the record, for the group that was there, here's Carrier Corporation, the great Carrier, fabricating this stuff in a non-union shop down in Texas, bringing in wetbacks to make this, to compete non-union like."

He said, "You see, they have no case here."

After much discussion we asked for and obtained an

adjournment of the meeting.

I felt under the circumstances I would like to bring it back to my management and we obtained that.

Q Did you make any statements or comments at this meeting or any responses to Mr. Farrell?

A No, none in particular.

Q Do you recall anything else that Mr. Farrell said at that meeting?

A Other than he kept repeating the unit as made would not come into New York. That's about all I can remember.

Q After that meeting at the Board on January 12, did you participate in any discussions inside the company?

A Yes.

Q As to what to do about this situation?

A Yes.

Q When was that?

A We had a meeting in the New York office, and all the principals were there. It was held in the board room, to discuss the New York City problem.

Q When was that meeting, about?

A Within a couple of days of the meeting of the Joint Trade Board meeting.

Q Who was present at that meeting?

MR. BOGEN: I object, your Honor. I am certainly

going to object to any conversations had and what the company did at that level is really not binding or any history.

JUDGE CONSTANTINE: Was any representative of Local 28 present?

MR. GREEN: No.

JUDGE CONSTANTINE: I sustain the objection. You may make an offer of proof in narrative form.

MR. GREEN: Let me hold off on that for a second.

Q After that meeting you talked about, did you speak with Mr. Farrell again?

A Yes, I asked for a session with him, which was arranged in his office.

Q When was that?

A Oh, again I guess 12, 14 -- somewhere around the 20th.

Q Of what month?

A January. All January, '67. I went to the meeting again with our lawyer, our legal representative, Walter Iles.

There was a representative of the Mechanical contractors there, their lawyer.

Q Do you know who was there?

A Dan O'Connel was there and Joe Hopkins of the

Mechanical Contractors Association and their lawyer, Dan O'Connel.

There was a representative of the sheet metal group and I'm sure their lawyer was there.

Q You mean the Contractors?

A Yes. And their lawyer was there. I don't remember his name right now. It may have been Ben Rosenthal.

Then there was Mel and several members of the union.

Q By Mel --

A Mel Farrell, the president and several other people from the office of the union.

Q Where did this meeting take place?

A In Mr. Farrell's office.

Q I would like you to tell us what took place at that meeting, by telling us who said what to whom.

A We discussed the two jobs that Carrier had on the books. We felt that we wanted to go ahead with those jobs so we asked for relief on those two jobs with the understanding that we would attempt to desin a unit that would meet the specifications which he was setting up, namely that the plennum could be made locally and the remainder of the unit brought in.

Q What, if any response, did you receive?

A We -- a deal was consummated at that meeting.

Q What was the nature of the deal?

A The deal was, we were to proceed with the 8th floor Carrier office and the Presbyterian job and we would proceed to attempt to design a unit that would fulfill his requirements.

Q What happened with respect to those two jobs?

A They were finished, ultimately, without any trouble.

Q Did Carrier make any efforts to redesign that unit?

A We proceeded immediately.

Q I call your attention to about September of 1967 and ask you if Carrier received any orders for the 37P unit in New York City at about that time?

A Yes. In '67 there was a job that came out or hit the streets, as we call it, known as the Police Office Building. That's right adjacent to this section here.

It was designed by Loring and the architect was Kelly & Gruzen.

That's the job that came out at that time.

Did you want to go into the particular as to what happened?

Q Yes.

JUDGE CONSTANTINE: Just wait for questions.

Q With respect to that job, did you have any discussions with Mr. Farrell about that job?

A The job as designed was not acceptable to Mr. Parrell.

MR. BOGEN: I ask that that be stricken, your Honor, as not responsive.

JUDGE CONSTANTINE: Yes.

Q Did you have any conversations?

JUDGE CONSTANTINE: That may be stricken.

Q Did you have any conversations with Mr. Parrell, regarding the Police Headquarters job?

A I did.

Q When did you have such a conversation?

A At a series of meetings which Mr. Parrell was responsible for setting up.

Q Where did such meetings take place?

A Meetings were originally held in the Building Trades Employers meeting room, 711 Third AVenue.

The final meeting was held at our place, because they had no room that day.

Q When did those meetings commence?

A September '67.

Q About how many meetings were there on this subject matter?

A Three or four.

Q When was the final meeting?

A In October of '67.

Q Did you attend all those meetings?

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A I didn't attend the first couple, but I did finish it up, yes.

Q How many meetings did you personally attend?

A The last two.

Q During the two meetings that you attended, were there any representatives of Local 28 present at those meetings?

A Yes.

Q Who were they?

A Mel Farrell.

Q Any other representatives of Local 28?

A I honestly don't remember. I am sure there was. He never went alone,but I don't remember.

Q Do you know a man named Mulhearn?

A Yes.

Q Will you tell us whether or not he was at any of these meetings?

A I would bet my salary on it. They traveled pretty much together in those days. I'm sure Mel had somebody with him, but I don't remember the name of the man. The record would have to show.

Q Can you tell us who else attended these meetings?

A Yes, there was a representative, Nocturn, from Loring's organization. There was a representative from the architect, there was a representative from New York

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City who was responsible for the design. There were quite a few people at the meeting.

Q I would like you to tell me what, if anything, Mr. Farrell had to say at these meetings, with respect to the Police Headquarters job.

A Well, the record -- it's a known record, he objected to Mr. -- Mr. Farrell objected to the design of the job for two reasons. One, they were using concrete slab to convey air, and two, they were using the Moduline unit, as designed in Tyler, Texas.

MR. BOGEN: May I have the answer read back?

JUDGE CONSTANTINE: Read it back, please.

(Requested portion of record read.)

Q With respect to No. 1, the concrete, did that have anything to do with Carrier's units?

A None.

Q Let's talk about the problem with the Carrier units. Did he make any suggestions as to what would be acceptable or not acceptable?

A Well, he pointed out that in his office we had made a deal with our lawyer there and so forth, and the only way the Carrier unit could be used on that job would be for us, Carrier, to complete the engineering, which we had agreed to do, and come up with a design which would permit us to make the unit in two sections.

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Q Did he say what you were going to do with those two sections?

A The plennum section was to be made in New York City by the local place and the -- the Local 28 shop, and we could bring in the lower portion to be fitted to it.

Q With respect to these meetings, did there come a resolution or agreement?

A Ultimately there was a signed agreement that was made up.

Q I show you what is marked as Appendix G on General Counsel Exhibit 2.

Would you please tell me what this is?

A This is the signed agreement.

Q With respect to that agreement, was there any person or employer given the work of making these plennums?

A An order was placed by the City and the plennum contractor was Jarco, Triangle Sheet Metal received an order to do the sheet metal work and as part of the sheet metal work they provided the plennums.

Q Will you tell us what Triangle Sheet Metal is?

A It's a shop, sheet metal shop affiliated with Local 28, operates in this area.

MR. BOGEN: I would object to the word "affiliated." Triangle at that time and still is a member of the intervenor.

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JUDGE CONSTANTINE: The word affiliated means they are in the same business together, is that what you meant?

MR. GREEN: Maybe we can stipulate that Triangle is a member of the sheet metal workers union and is bound in a contract with Local 28.

JUDGE CONSTANTINE: That is what he meant by affiliated?

MR. GREEN: Yes.

MR. BOGEN: No objection.

MR. MC GUINESS: No objection.

JUDGE CONSTANTINE: The stipulation is received.

Q Mr. Contardi, the work of fabricating or the work of plennums, as I understand, was given to the Triangle Sheet Metal Company.

Will you tell us when that company started to work with respect to the 37P units, about when?

A Well, that was in'67. The job was just finished a year ago, believe it or not. They worked on it on and off all that time.

Q From '67 to '71?

A Yes. Actually it was late '67, so it was -- call it '68 to '71. It was over three years in building.

Q You are talking about '71 or '74?

A '74, I beg your pardon. We finished -- I said it was running for about a year. We have finished in '73. Itwas

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five years building it.

Q Were you involved personally, with respect to the Police Headquarters job?

A Yes.

Q Did you visit that job from time to time?

A Many times.

Q I would like you to tell me, did you observe any plennums at that job, with respect to the 37P units?

MR. BOGEN: I am going to object, your Honor. You have the history of something -- again, I am not sure where we are going with the history -- whether problems, his observations, anything like that, got what has happened, in terms of a history.

JUDGE CONSTANTINE: I agree with you. I don't think problems are part of the history.

I will sustain it.

You may make an offer of proof, if you wish, in narrative form.

MR. GREEN: Your Honor, I will make an offer of proof, but just let me suggest what I am trying to have the witness testify to.

MR. BOGEN: Let's have the witness leave the room, if he is going to suggest what the witness testify to.

JUDGE CONSTANTINE: You go ahead and make your offer of proof.

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MR. GREEN: Since the start of the Police Headquarters job, with the Model 37P units, as redesigned in accordance with the October agreement, those units didn't work; there were leaks and there was noise and, of course, Carrier spent a substantial amount of money to have those units put in adequately for the customer, because Triangle Sheet Metal couldn't do the job. They were not able to do it.

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MR. GREEN: I am sorry, that's my fault.

Q Following the October '67 agreement, did Carrier make any efforts to market the 37P units in New York City as redesigned?

A We sure did.

Q Would you tell us what happened?

A We just couldn't sell the unit. It's that simple.

Q Why not?

A It was not economically feasible, it would not sell.

MR. BOGEN: Your Honor, I ask that that be stricken, it not being historically relevant to what is before you at this time.

JUDGE CONSTANTINE: I will allow it. I think it's part of the history.

Q Did there come a time when the 37A unit was introduced to the market by Carrier?

A The 37A unit was introduced in 1970.

Q Where is the 37A unit manufactured?

A Tyler, Texas.

* * * * *

JUDGE CONSTANTINE: On the record.

Mr. Green, continue your examination of the witness.

Q After the meeting with Mr. Farrell in August 1970, did you attend other meetings with Mr. Farrell thereafter?

A We met periodically until his death in February of '72, I think it was.

Q Could you please tell me what, if any, position Mr. Farrell took, with respect to the use of the 37A or 37P units in New York?

A He maintained his old position. He did not change.

Q What did he state?

JUDGE CONSTANTINE: I know what his position is.

I am trying to shorten the hearing.

Q Was there any agreement between Carrier and Local 28?

A No.

Q After Mr. Farrell died, who became president of Local 28?

A Dan Pasquinucci.

Q I call your attention to 1972 and after Mr. Pasquinucci became president of Local 28.

Did you meet with or talk to Mr. Pasquinucci, regarding the Carrier Moduline units?

JUDGE CONSTANTINE: May I have thespelling of that? I know it's in the complaint.

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MR. BOGEN: P-a-s-q-u-i-n-u-c-c-i.

JUDGE CONSTANTINE: Thank you.

A What was the question, please?

Q I said in 1972 did you meet with, talk to Dan Pasquinucci, regarding the Carrier Moduline units?

A I attemped to meet with him a few months after Farrell's death, but he begged off, because he was in the throws of negotiating an agreement --

JUDGE CONSTANTINE: The question is: Did you ever meet with him?

THE WITNESS: In August of 1972.

JUDGE CONSTANTINE: The answer is in August.

Q How did that meeting come about?

JUDGE CONSTANTINE: It doesn't matter how it came about. Find out what they said.

Q Where did that meeting take place?

A In Pasquinucci's office.

Q Who was present?

A George Baum and myself from Carrier, Dan Pasquinucci and a couple of the men that worked in the office there, some of the officials of the union. And Larry Sturgis, who was a member -- who was a director of the promotional fund, Dan had asked him to attend.

Q What is the promotional fund?

106 A The promotional fund is a fund that is maintained by contributions from the hourly rate of the men, part of the agreement, which promotes the good of the industry through the trade and also used for educational purposes of the men.

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MR. BOGEN: If your Honor please, without the stipulation which Mr. McGuiness prefers not to stipulate to, I refer his Honor to Page 16 of the most current collective bargaining agreement, which is Appendix -- what appendix is that, please?

MR. MC GUINESS: E.

MR. BOGEN: Appendix E to our stipulation of facts.

JUDGE CONSTANTINE: GC2.

MR. BOGEN: Yes, Article 15, Page 17. I refer --

JUDGE CONSTANTINE: You don't have to read it.

MR. BOGEN: I am not.

JUDGE CONSTANTINE: It says the industry promotion funds will be administered by trustees appointed solely by the employer.

You don't have to stipulate. That is in evidence.

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Q I don't know if I asked you or not, but where did this meeting take place?

A In Pasquinucci's office.

Q I would like you to tell us what happened at that meeting. In other words, who said what to whom?

A Well, we reviewed the history going back what had ahppened through many years and we discussed the problem as it now stood and the fact that we couldn't make the unit as proven by evidence.

We hadn't sold the job in several years. Dan said that -- Dan Pasquinucci said that in his opinion, he would like to get an opinion from his own people on the unit. He felt that based on what he had been able to see, maybe the unit did contribute to the industry and he would like to know more about it, so he said he was going to appoint a committee to study this, of union members in key positions, I guess, and he would ask them to review it and come up with a recommendation.

Q Do you recall whether or not Dan Pasquinucci said anything else at that time, at that meeting?

A He definitely wanted a settlement, yes, one way or the other, once and for all, a complete review.

Q Do you recall whether or not he said anything about the status quo of what the current situation would be?

A The current situation, there wasn't any question insofar as Pasquinucci was concerned. We could not bring

the unit in until we had some kind of understanding.

The unit as made was unacceptable in New York.

MR. BOGEN: I object to that, your Honor, unless this was a statement or something. I don't know what —

JUDGE CONSTANTINE: This is something that Pasquinucci said. If he didn't say it, my notes are incorrect. He said at this meeting.

Q Is this something that Mr. Pasquinucci said?

A Yes, he did.

Q Do you know if such a committee was appointed?

A It was appointed.

Q Did you ever appear before such committee?

A Yes, I appeared before the committee in September of 1972.

Q Where did you go? Where was it?

A The committee met in the sheet metal promotional fund office and I met before them in that office.

Q Who was on that committee?

A Bill Connelly, who is deceased, Howard Bretz and A. Berman.

Q Was anybody else present?

A Larry Sturgis was there,he was acting as secretary.

Q I would like you to tell us what happened at that meeting, what was said and who said what to whom.

A They asked me to review for them the unit as it was made, they asked me to talk about why I thought it should be brought in, which I did review the fact, which is unimportant here, that it would bring more work in, and so forth.

I also had brought to that meeting, I had my people bring in, pick up a plennum section from the police office building, pick up a portion from the police office building, that they had attempted to put together.

Q Were there any comments?

A I had it in the room with us and I asked them to examine it, the idea being, there were men that were important men in the industry, that had run jobs, knew how to sketch and fabricate, knew the industry and I asked them if they were in my position, whether they would want to market a product made up of two pieces like that.

Q What, if anything --

A The consensus of that group was, they could understand why we did not want to go ahead on that basis, that they could see why it was leaking, they could see why we had the problems and that it was a bad deal.

Q Was there any discussion of what problems where were?

A Yes.

Q What was that discussion and who said what?

A Well, I discussed the leaks, I showed them how and why it leaked, I showed them some of the things that we were doing to make the things fit and I pointed out to them that as a manufacturer, even though the two components were made separately, we had to accept all responsibility for the end results, the performance, to CBI, as to sound and the whole — the entire agreement, again, getting back to this October 13, '67 agreement on the police office building, the architect and engineer insisted that Carrier Corporation take full responsibility for the end result.

Q The unit that you brought to that meeting, where did it come from?

A The police office building.

Q Who had done the plennums?

A Triangle Sheet Metal.

Q Did you ever accept any kind of report from this committee?

A Yes.

Q From whom?

A Larry Sturgis gave me a copy of their recommendation, which was presented to the executive board.

Q I show you General Counsel Exhibit 2, Appendix I, and ask you to identify that.

A This is the report of that committee that was given to me.

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MR. BOGEN: At this time, your Honor, I don't know if there are any further questions about the committee, but I ask that the testimony about the committee's report be stricken, since there has been no testimony that this was not binding on Local 28.

MR. GREEN: That report is already stipulated into evidence.

MR. BOGEN: It is in evidence with respect to the authenticity. I say with respect to the testimony

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that has been elicited now, unless there is more now --

JUDGE CONSTANTINE: Presumatively the committee had the authority. You may show that it hadn't.

MR. BOGEN: The basis of the presumption would be on testimony or something. The testimony you have is this witness at this time. The witness said it was for the committee to review and make a recommendation. It wasn't binding. That's all you have at this time.

JUDGE CONSTANTINE: The report or recommendation purports to be on the stationary of Local 28. There is a presumption that that is in the regular course of their business. You may show that it wasn't. That is part of your defense.

MR. BOGEN: The testimony of this witness has indicated who constitutes the committee and what their function was.

114 JUDGE CONSTANTINE: It was on behalf of Local 28, according to this witness.

MR. BOGEN: For the purpose of meeting with him and coming up with a recommendation. It doesn't bind the local.

JUDGE CONSTANTINE: That is a matter of argument. I will not make a ruling either way. I only rule that

it's admissible.

Q Did there come a time that you spoke to Mr. Sturgis, regarding the possibility of resolution?

A Yes. In October, when this committee presented --

JUDGE CONSTANTINE: October '72?

THE WITNESS: Yes, sir.

A This committee presented this before the executive board and they -- the result of that was -- I don't, of course, know what happened at the executive board -- the result of that was, that Larry Sturgis came back to me the next day and --

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JUDGE CONSTANTINE: All right.

Q I show you what is marked as General Counsel Exhibit 10 and ask you if you can identify that particular document.

A Yes, it's a letter I wrote.

Q To whom?

A Larry Sturgis.

Q On what date?

A October 18, 1972.

Q After October 18, 1972, did you have a conversation with Mr. Dan Pasquinucci, regarding the Moduline unit in question?

A I did.

Q About when was that?

A It was after October, late November, when I got back from vacation, we discussed the fact that --

Q Tell me how did you discuss it with him?

A Telephone.

MR. BOGEN: I don't have the date on that. I have the month but not the date.

118 JUDGE CONSTANTINE: According to my notes, late in November '72, but it was after October 18th.

MR. BOGEN: Thank you.

Q You spoke to him on the phone?

A Yes. Several times.

Q Let's try to break it down.

JUDGE CONSTANTINE: Each time was it the same conversation?

THE WITNESS: Yes, trying to get an answer to the problem, yes.

Q I would like you to tell me what you said to him and what he said to you.

A I asked Dan what he was going to do, inasmuch as he didn't get it by the executive board. He felt -- made no bones about it, that he felt this unit should be admitted

to New York.

He said he was going to make another appeal and get a Trade Board decision to the effect that they would change the agreement and thereby bring it into New York that way, which was attempted, I understand, in February of '73.

Q Did either you or Mr. Pasquinucci say what he couldn't get by the executive board?

A Well, he wanted the unit as fabricated. He agreed finally, based on his committee report, that he thought the unit should come into New York and be accepted as fabricated,

119 into New York as fabricated, tested and adjusted in Tyler, Texas.

Q Did he say that there was somebody who disagreed with him?

A Definitely. The executive board.

Q Didyou personally attend any meetings of the Joint Adjustment Board?

A I had no right.

Q You did not attend?

A I did not attend.

Q Did you receive any communication as to what the Joint Adjustment Board had done in '72?

A Dan said they had turned him down.

Q Dan is who?

A Dan Pasquinucci.

Q How did you talk to him?

A On the telephone.

Q About when was that?

A About March of '73.

Q I would like you to tell what you said to him and what he said to you, as completely as you recall.

A We reviewed -- naturally, you review everything that has transpired so far.

I said, "Dan, it's my understandingfrom people that know you can make a decision, you do not need the executive Board, you do not need the Trade Board and that's still my understanding. However, you have elected to take this path and you're not successful, what the hell are you going to do now?"

I said, "We cannot stand the pressure, we can't market the equipment, we have got to do something."

He then said he was going to appoint a member of the committee to make a presentation to the membership at one of the union meetings in an effort to sell the membership on the idea.

Q Did he say who he was going to appoint?

A Yes, Howard Bretz.

Q Did you have occasion to speak with Dan Pasquinucci regarding such a meeting?

A After the meeting was held, through several sources, I found out it didn't work out.

Q Did you hear from Dan?

A I called Dan and Dan told me it didn't work out.

MR. BOGEN: Can we get a date on that?

JUDGE CONSTANTINE: It's after March of '73.

* * * * *

Q I call your attention to 1973. Did there come a time during that year that Carrier received an order for 37A units for a job called the Van Etten Drug Treatment Center?

A Yes, in August of 1973, our distributor, Carlton Stewart, received an order for the unit and other equipment for the Van Etten Drug Center.

Q What is Carlton Stewart?

A They are a distributor in New York for Westchester and Long Island.

Q Were you personally involved in how this order came about?

A Yes. The job is a job that originated with an

architect in New York, who selected a mechanical engineer in Baltimore to do the mechanical engineering.

The architect called our New York office and we got involved. He asked for information on the units and it was the architect working with the engineer that decided to put Moduline on the job. The architect was Isadore and Zachary Rosenfeld and the engineers are Henkins & Anderson.

Our Baltimore office worked with Henkins & Anderson for the design for the job.

MR. BOGEN: I move to strike the testimony with regard to any decisions made by anyone except Carrier. The witness said something about they decided themselves or something of that sort. It's not binding on Local 28, on what they did or did not do.

JUDGE CONSTANTINE: No, it's not binding on you but it's part of the history. I am admitting it only on that ground. Somebody in Baltimore asked them to make a unit in a certain way.

Q Did there come a time when you heard of a problem regarding the 37A units at the Van Etten Drug [redacted]ent Center?

A Yes, I knew we had the order, I knew the job was

going ahead, I think about the 18th of October, 19th, somewhere in there. I was on vacation in Florida and I got a call from Webster who advised that they were having trouble --

MR. BOGEN: I object to any advice or anything else with regard to a problem at Van Etten. We are beyond the history now. We are down to very current affairs.

JUDGE CONSTANTINE: I will sustain your objection on the ground that Local 28 was not a part of that conversation.

Q Do you know who the sheet metal contractor on that job was?

A Three Boro.

Q With respect to that job, did you have a conversation with Dan Pasquinucci?

A I did.

Q When did you speak to him?

A I called him from my motel in Florida. I talked to him in New York by phone.

Q When was that?

A And I said to Dan, "Dan --"

JUDGE CONSTANTINE: Wait a minute.

Q When was that?

A About the 19th or 20th of October.

I said, "Dan, I hear that there's trouble on the Van Etten job."

I said, "Dan, I understand you have refused to let them sketch the job."

He said, "That's so."

I said, "Dan, are you, as a union representative, telling me, as a representative of Carrier, that you will not permit this unit to come in, into New York?"

He said, "That's so."

I then made the general statement, "Well, you know what this is going to mean."

He said, "I do."

Q Did that end the conversation?

A That ended the conversation.

Q You talked about sketching. In your conversation with Mr. Pasquinucci you used the word sketching.

Can you tell us what sketching is, what it means?

A Well, an engineer designs a job and makes drawings. However, when it come to install the job, the building, the design has to be studied along with other trades to eliminate any conflicts and also to detail the duct work that has to go in there. The sketcher does that kind of

work. He is a union mechanic trained to do that.

Q What union?

A Local 28.

Q What was the next thing that you did, after your phone conversation with Pasquinucci?

A I discussed it with Syracuse, and then I talked with Mr. McGuinness and I flew to New York and we filed charges.

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JUDGE CONSTANTINE: You showed good judgment.

Q You filed charges with the NLRB; is that right?

A That's right, in this building.

Q I call your attention to the following month, November of 1973.

Did you attend any meeting with Dan Pasquinucci during that month?

A Yes.

Q Where did you meet with him?

A I met in Mr. Pasquinucci's office.

Q About when did that meeting take place?

A About the 18th of November.

Q Who was present?

A Mr. Bogen, Mr. McGuiness, Mr. Webster of Carrier

and myself.

Q Who is Mr. Webster?

A Mr. Webster works for Carrier. He is a specialist on systems and covers the northeast.

Q I would like you to tell me what was said during this particular meeting and who said what to whom.

A I think possibly the union was a little surprised that we had filed charges --

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Q Why don't you just tell me what people said.

A And we discussed the problem. Dan said that he could not permit the unit to come in and suggested that we give consideration to sending into New York the cut pieces of the unit, deliver them to some shop in New York, which could take the cut pieces and put them together and make the units.

My memory says that he would permit approximately 75 units to come in this way, so that they could get the experience and after the, the entire unit would be made in New York.

He further went on to ask that we go see a shop that did some of this kind of work, which I did a week later.

Q Did you visit such a shop?

A I did visit the shop, spent a morning there and

looked at it.

Q What shop was that?

A ACR, I think it is.

Q When did you go to that shop?

A The day after Thanksgiving, in November of '73.

JUDGE CONSTANTINE: Of '70 what?

THE WITNESS: '73, sir.

Q Was that one of the shops that he named?

A Yes.

Q I am talking about Pasquinucci.

125

A That's right.

Q What did you observe when you got to that shop?

A Based on our production facilities, it was rather — well, it needed a lot and it didn't appeal to us at all. I reported to our people, we discussed, I then called Dan Pasquinucci and told him we would not bring any units in for fabrication in New York.

Q Did there come a time when arrangements were made to ship 37A units to the Van Etten Drug Treatment Center?

A We shipped seven units in January of '74.

Q What was the schedule of shipments to the best of your recollection?

A I think we shipped seven units in January and we

shipped the remainder, like, February, thereabouts.

Q What happened with respect to the first group of units?

* * * * *

Q Can you tell me whether or not the first seven units were delivered to the site or not; delivered to the site at the appointed time?

A No, they were not.

Q After January of '74, did you have any further conversations with any representatives of Local 28, regarding an attempt to revolve the problem?

A Yes.

Q How did that come about?

A In February we had a meeting in the Carrier office.

Q About when in February?

A About the 23rd, 24th, somewhere in there.

Q Who attended that meeting?

A Mr. Bogen and Mr. Pasquinucci, Mr. McGuiness, Mr. Webster and myself.

* * * * *

Q Was there any settlement of this case at that meeting?

MR. BOGEN: Objection, your Honor.

JUDGE CONSTANTINE: That much I will allow.

Did you arrive at a settlement?

128 1 THE WITNESS: I think we did.

Q Will you tell us what that settlement or that agreement was in terms of this case? In other words, the litigation of this case, but in terms of bringing in Carrier units into New York.

MR. BOGEN: Objection, your Honor.

JUDGE CONSTANTINE: On what ground?

MR. BOGEN: On the grounds that the settlement and discussions with respect to it should not be admissible at this point.

JUDGE CONSTANTINE: If they arrived at an agreement, I will allow it. He said they did. You can contradict him. I will allow him to describe what the agreement is. I will overrule the objection.

Q Please go ahead.

A The agreement we arrived at, that I think we arrived at, was the Van Etten job to go ahead without interruption. We were to prepare an outline of what had been offered previously in the way of an agreement and I was to deliver that by March 15th to Dan Pasquinucci, in writing, which

I did. It was understood that we would not sign it until July 1st.

Q Why July 1st?

A Because there was a union election and he did not want to have that interrupt and upset the membership.

Q What else?

A What's that? The union election was at the end of June.

Q Any other parts of this agreement?

A That's the agreement.

Q Did you attend, after that meeting, did you attend another meeting with Local 28, with Mr. Pasquinucci?

A I did. In May Dan called and he was upset and annoyed -- Dan Pasquinucci called because he was upset and annoyed because he had heard that Presbyterian Hospital, there was another job out, and he wanted to discuss that job. He thought that it would upset his membership.

Q Did you meet and discuss --

A We did.

Q When was that?

A We met in his office in May.

Q Who else was present?

A Mr. McGuiness, Mr. Webster, Mr. Bogen and myself.

Q What was said at that meeting?

A Dan said that -- Dan Pasquinucci said that he couldn't afford to have anything upset what was going on in the way of -- didn't want his membership upset and there were rumors that possibly there was some kind of arrangement on the unit and accordingly, he suggested that he reactivate the committee, that he had set up previously, and appoint a man to fill Connelly's position, who had died, and he asked me to meet with the committee, which I did.

Q When did you meet with them?

A In May of 1972.

Q Where did that meeting with that committee take place?

A In Mr. Pasquinucci's office space in one of the meeting rooms.

Q Do you have any closer date on that?

A I'd have to look at my notes somewhere. I know it was in May of '74, late May.

Q What happened at that meeting? Did you say anything and did the committee say anything to you?

A Yes.

Q Tell me what.

A The people at the meeting were Berman, Bretz, the

new man --

Q Do you remember who the new man was?

A No. And a fellow by the name of Schulter, who replaed Sturgis and was acting as secretary, and myself.

Q He was at that meeting?

A Yes.

* * * * *

I am going to overrule your objection at this time.

Q Would you please tell me what happened in the meeting of the committee and what was said by whoever said it?

A Bretz was there and Berman. They had been part of the original committee appointed by Pasquinucci. They reviewed what they had discussed at that time. What they had agreed to. They asked me to explain to them why the unit would be beneficial to Local 23, which I did.

Q What did you say?

A I said it would bring -- the unit per se -- they were talking about the loss of the plennum. The plennum was a minor portion of the work that they lost. The unit would -- since it was an all air unit and not handled by water as some of the other units that had come in, it would definitely increase the total volume of work for them.

Q For whom?

A For Local 28 in the area and they were remiss in not bringing it in. They were hurting themselves. It was brought out that we had filed charges at the NLRB and they made mention of the fact that they were negotiating with a gun at their head, which they didn't like. I'm sure that's part of the minutes that were prepared by Schluter.

Q What else do you recall?

A I was asked many questions by -- gee, that one man misses me -- the new man, because he hadn't been party to the original discussions.

Q Do you know a man named Frank Rueckert?

A That's the one, Rueckert.

Q We finally adjourned at about 12:30 and had lunch together as a group with Eddie Reilly and I left them.

Q Did you make any notes or minutes of this particular meeting?

A I did.

Q Did you give those notes to anybody?

A I made the notes and I sent them to people at Carrier and also to Mr. McGuiness.

Q Did you give them to anybody other than that?

A No.

Q About when did you make such minutes of this particular meeting?

A Within 24 hours of the meeting. That was a Friday. I made them probably that afternoon or on Monday morning.

* * * * *

but if it is, you must show that he was authorized.

Q Did there come a time when Mr. Pasquinucci lost his office?

A Yes, I guess when he did not win the election and Mr. Stack became president.

Q When was that?

A On July 1st --

JUDGE CONSTANTINE: Mr. Who?

THE WITNESS: Mr. Stack.

JUDGE CONSTANTINE: S-a-c-k?

THE WITNESS: S-t-a-c-k.

Q When was that?

A July 1st of '74.

Q When Mr. Stack became president or won the election did you make any efforts to contact him?

A Yes, we made -- I didn't call him the next day,

I had a death in the family, I was away for a week. But I called the second week in July and we had a date for the 19th, which was the day after he would actually be officially made president.

Q Did you meet with him on the 19th of July?

A Yes, we did in his office. Lou Webster and I met with Mr. Stack and Mr. Bogen.

Q I would like you to tell me what was said during that particular meeting.

140 A We reviewed the fact that we had this so-called tentative agreement with Dan. We asked what he was going to do with it. We felt we were running out of time and something had to be done.

Mr. Stack said that he would like to review it with the executive board and others and that was, I think, a Thursday or a Friday, and he said, like, call him on a Tuesday and he would have an answer. He would review it with a committee and an executive board and he would have an answer.

On that Tuesday I called him and Mr. Stack said that they were going to insist that we go along with the agreement as written.

MR. BOGEN: What agreement?

THE WITNESS: Local 28's agreement with the association.

* * * * *

CROSS EXAMINATION

Q (By Mr. Bogen) Mr. Contardi, I just want to cover some of the material that we had in the beginning, with respect to the unit. I will refer to the unit 37A, 37P, interchangeably, if there is a significant difference.

A There is. They should not be.

Q The unit that we brought in to be marked as an exhibit, deemed marked as an exhibit, that is what?

A That is 37A.

JUDGE CONSTANTINE: Let the record show that you are referring to Respondent's Exhibit 1.

MR. BOGEN: Thank you, your Honor.

Q Would you describe how that unit functions in connection with the air conditioning system in a building?

A Yes. The air is supplied into the plant, plennum.

Q The plennum you are talking about now is the plennum of the unit?

A That's right.

Q So that we have a very clear record, can we start

from the beginning of an air conditioning system? This is part of an air conditioning system, correct?

A Yes.

142 JUDGE CONSTANTINE: I think you told us at some point air is brought into that system; is that correct? You can't shake your head.

THE WITNESS: Outside air is brought in from the outside, mixed with return air. Okay?

Q Where does that take place?

A At a main apparatus.

Q Is that a fan room?

A A fan room.

Q It comes in through some louvres, it's sucked in from the outside?

A Outside air comes in through louvres in the screen, through a filter bank, it's mixed with warm air, it's taken to a unit where it's dehumidified --

Q Can it be heated also?

A Yes.

Q Take it step by step.

A Then into a fan and discharged to the ducts that lead to the various localities.

Q Having been filtered, heated or cooled, the air is

then driven through the air conditioning or the system; is that correct?

A The duct work, the duck work.

Q How is the air driven through that system?

A It's the fan pressure that pushed it through.

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Q The air that we just talked about is then distributed throughout the building or [illegible]where it's ultimately going to be used for some purpose; is that correct?

A That's correct.

Q By the way, is there a high system, a low system, or is this --

A Medium pressure.

Q What kind of pressure would medium pressure be? What force of air is coming out now?

A Three inches, four inches, five inches, right around there.

Q Is that a strong force, can we say, generally?

A Fair. As you know, low pressure systems, because of building size, you use normal pressure, you use a medium pressure or you can use what we use on conduit, that's how and that can go up to eight or nine inches.

Q The air is distributed through the duct system, that's sheet metal work, too?

A Yes.

Q With the use of this unit, 37P, the air comes through a duct and comes out of this unit; is that correct?

A That's correct.

Q When the air comes out of the duct, I believe you told us it goes into a plennum?

A That's it.

144 Q The plennum is this metal box?

A That's right.

Q Is that correct?

A That's correct.

Q The times you used plennum throughout your entire testimony you were referring to the metal box that I am touching now; is that correct?

A Correct.

Q What is the purpose of the metal box attached to the unit, if any?

A Primarily one of equal distribution and sound absorption. That is lined with a sound absorber. From that it goes through a diffuser plate into the -- pase the bellow and out through the outlet.

Q Let's take it slow again.

The air that is coming into the plennum, this metal

box, directly out of the duct work, could that air go directly into the pressure, into the unit, the other portion of the unit?

Could the air go directly from the duct into the mechanical unit?

A Not in that unit.

Q As a matter of fact, it would blow it apart, probably?

A No, not on that unit, because the sound value of the unit is dependant on the entire assembly.

Q You indicated one of the purposes for the plennum, the metal box, is the sound. Is it also to capture the air coming in at great pressure, velocity?

A No, that's not a high pressure box, per se. It's to distribute the air equally along that distributing plate and also to help absorb the sound. That could be generated back before it got here.

Q It also reduces somewhat the velocity or the force of the air coming in,doesn't it, is that the purpose of it?

A No, because we discharge that at a very high velocity. That's part of the feature of the unit.

Q When it goes into the plennum, the metal box, it

then goes into a pressure reducing device; is that correct?

A No, there is no pressure reducing. It goes across the bellows and comes out at high velocity.

Q Then it goes into the diffuser?

A No, into the room. It's distributed at very high velocity right along the ceiling. That's a feature of the unit.

Q If you didn't use this unit now, the air comes out of the same fan we are talking about and it would have to be fed into a pressure reducing device; is that correct?

146 1 A In another type unit, that's correct.

2 Q Instead of feeding it into a pressure feeding

3 device, the plennum in your unit takes the place of

4 that?

5 A No, what you are talking about is the unit something

6 like the one up there.

7 Q Indicating something in the wall.

8 A The two outlets outside of that grille is what I

9 call conventional outlets. When they throttle back on

10 them, they just dump into the room. This, even at low

11 air quantity, distributes into the room at high velocity

12 and one of the patent features is that you got into

dumping. We discharge at high velocity along the ceiling. That's a feature of the unit.

Q Let's go over the unit.

The box itself is physically separate from the other part when assembled; is that correct?

A No. The assembly -- there is somebody here that can testify better than I as to how it's assembled. We happen to have a man here who is, I understand later -- the assembly is not just separate. It has to be done as a unit.

Q Didn't you speak about there are several components to the unit? One we can identify as the plennum?

A You said that.

147 Q It's a metal box, right?

A Yes.

Q When you say the word plennum, somebody who might walk out on the street and hear the work plennum might be frightened -- it's a metal box, right?

A That plennum is a metal box, the unit we are responsible for, the entire unit, as I pointed out on that damn agreement on the Police Office Building, we are responsible for the entire unit. What you are calling the unit, this part, separate of the plennum, can never work separate

of the plennum.

Q I know that, sir.

By the word unit we mean the entire item?

A Right.

Q It's made of several components. One of them is a metal box?

A That's right.

Q It's put together with the other two.

A That's right.

Q I want to identify those. You have the plennum, which is put together with what appears to be two other component parts; is that correct?

A I repeat, Sol, I would much rather have the expert testify about how it's put together. It's not put together that way.

Q We will get to the expert after you testify. When he comes in --

A My understanding of it is, in order to give the guarantee that we give with that unit, we assemble part of the plennum with part of this section here.

Q What is that section called, that you attach ~~it~~ to?

A What do we call it?

Q Yes.

A This is the control assembly.

Q You have got the plennum box. You can look at it and it shows three component parts; doesn't it?

A Yes.

Q What is the next part directly to what the plennum is attached to? What is that called?

A What you are hitting now is a side panel.

Q Right.

Then you have a diffuser section; is that right?

A That's right, that's the diffuser section.

Q Now we have the plennum, that's the box, you have a diffuser. Is there any other component to the unit?

A Yes, inside there is a bellows assembly and you will see the controls.

Q The controls, can we agree, are between the box and the diffuser?

149 A Put your hand --

Q It's right here?

A That's right.

Q What's the third component?

A With the bellows, it goes the entire length.

Q It goes the entire length of the diffuser?

A That's right.

Q We have three portions to this.

In connection with general air conditioning units, is the term plennum or is or are there plennums used?

A Sure.

Q Is the plennum used in practically every air conditioning system, in one fashion or another?

A I guess you are right.

Q You don't have to struggle. There is no question about it. It's a basic item, isn't it?

A Yes.

Q What is the plennum used for generally in the air conditioning system?

A It varies.

Q It varies from what to what?

A You might have a plennum between the filter section and the coil section.

Q What would be the purpose of the plennum you find there?

150 A For someone to walk in and work on either one, work on the coil section or work on the filter section.

Q It's an air passage place?

A In that case, it's a passage where a person can get in and work on components, yes.

Q Where else would you find a plennum in conventional systems?

A You've got them between coil sections, between apparatus and fans.

Q Are plennums used to capture air or with respect to operation of the return air systen, also?

A Yes.

Q What is the purpose there?

A If it's a duct system, conceivably, it could be to -- if they are filter banks, to work on filter banks. There is many reasons for plennums; the reason plennum is on here is for sound and for distribution.

Q With respect to the other general systems we are talking about in the sheet metal industry, these are made of sheet metal, aren't they?

A In a lot of cases, yes.

Q As far as the sheet metal industry is concerned?

A Yes.

Q As far as the air conditioning industry, the plennum is found in all sizes?

A Yes.

Q They can be found as the size of rooms?

A We are talking about units. We ship them out of

Syracuse and all over.

Q We agree that a plennum comes in all sizes; is that true?

A Yes. And for all functions and in this case, the function is for sound and air distribution.

* * * * *

Q With respect to the fabrication, can you and I agree that the fabrication of the plennum here, the metal box, is no different than the fabrication of any other metal box?

A The fabrication per se, no, but the assembly, yes.

Q The fabrication, all you are doing is putting a metal box on two other component parts; is that correct?

A Yes.

Q We went through in our stipulation, we went through a number of patents. The patents had to do with the mechanical aspects, the other component parts, not the metal box; is that correct?

A If you search the patents, you will find, I am sure, that it has to do with the assembly of the unit and the assembly of the unit includes the plennum.

Q The plennum standing by itself is the metal box; isn't that true?

A Yes, but standing by itself, it's valueless.

Q The patents have to do with the unit coming together and opening together and there are separate patents for each of the other component parts. There is no separate patent for the plennum; is there?

A No, but the end result is patented.

Q If these little screws on the side here, whatever they are, were removed from the box, you couldn't tell this metal box, this plennum, froma hundred thousand other metal boxes made in the industry, could you?

A No.

* * * * *

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Q I agree.

You mentioned before, Mr. Contardi, that Carrier was a member of a mechanical association. I am sure --

A Mechanical contractors.

Q Thank you.

For a period of time the association had collective bargaining agreements for Local 28; is that correct?

A Correct.

155 1 Q Approximately how long did that association have
2 a collective bargaining agreement with Local 28?
3 A I know until '69. I don't know when it started,
4 but I know as long as I can remember, it had one.
5 Q How long would that be? How long can you remember?
6 A I go back to '39.
7 Q From at least '39 to '69, there were agreements.
8 As a matter of fact, the last ten years of that period
9 of time you were on the negotiations committee for
10 the mechanical contractors; is that correct?
11 A That's correct.
12 Q As part of your responsibilities, you negotiated
13 with Local 28, with respect to the collective bargaining
14 agreements, right?
15 A The committee I was on, yes.
16 Q You participated and you were present?
17 A I was present.
18 Q During the course of your negotiations, and your
19 relationship with 28 as a negotiator, as a party and as
20 an officer of the corporation who was a member of the
21 association with whom they had a contract, were you
22 familiar generally with what items or products were
23 produced or fabricated by Local 28?
24 A Yes.

* * * * *

Q To your knowledge, during the period between '39 and '69, were the sheet metal shops and mechanical shops contract with Local 28 making plennums, fabricating plennums or metal boxes of this kind?

A Not of that kind.

Q What was the difference?

A They never made one of that kind insofar as we are concerned.

Q When you say that kind, you mean attached to the two other items?

A The finished products, no, they never made anything like that.

MR. MC GUINESS: May the record show, your Honor, when they speak of that kind, they are speaking of Respondent's Exhibit 1?

JUDGE CONSTANTINE: Yes, the record may show that.

Q They made metal during this period of time, they made plennums, metal plennums?

A They made plennums, but not to these units.

Q But they made them generally, isn't that a fact?

A Yes.

* * * * *

159 Q Are you familiar, Mr. Contardi, with the work historically, traditionally, customarily performed by sheet metal workers, collective bargaining representatives, in units represented by Local 28?

A I think I am.

Q Is the plennum, the metal box, one of those items?

A Historically, somewhere in the period that you are talking about, they laid a claim to it and it was settled in their favor. Before that, it was brought in.

Q When was it settled in their favor?

A I honestly don't remember.

Q It goes back at least 20, 30 years; is that correct?

A No, it doesn't. Lou Sternberg was alive, to be specific, and Lou fought the thing bitterly. You know it and I know it. That was not 20 years ago.

Q The sheet metal boxes, I ask you now, the sheet metal boxes, the plennums, all sizes, have they always, to your knowledge, the 38 years you have been in this field, always been made by the sheet metal workers in the collective bargaining —

160 A I answered you no. I told you and I repeat, we make a conduit weather master unit and we make the units and the plennums in Tyler, Texas.

Q What about the plennums generally that were being made?

A In connection with an air handling unit, yes, with a larger air handling unit, that was just about the time of his death, Lou Sternberg.

Q We agree that that was --

A In the '60's.

Q Some time in the '60's.

A Lou Sternberg participated in the early meetings in this period at Local 28.

Q The plennums you are talking about that involved Lou Sternberg are the plennums involved with your units?

A No, they were in connection with fan coil units that handled, you know, ten, 15, 20,000 CFM. They were Westinghouse units that were brought down on a job up on Sixth Avenue, where they laid their first claim.

Q I think you testified that the original unit, 37P was first made sometime in '60. In '60 it was ready for marketing.

A We made the first ones in '63.

Q Then you started to market in New York City between '66 and '67; is that correct?

A No, we started our first order, according to the

order, was in August of 1966. It was given to Carrier by Menier for the Presbyterian job that we talked about earlier.

Q You testified, you said you wondered about the New York market; is that correct?

A Yes.

Q Why did you wonder about the New York market?

A We felt that they would ask for some portion of the unit.

Q What portion of the unit did you feel they were going to ask for?

A We didn't know. That's why we called them in and asked for their opinion.

Q As a matter of fact, before you had a meeting in New York, you had a meeting with Farrell?

A In 1966 we had a meeting with Farrell in the Carrier New York office.

Q That's before you decided to try the New York market?

A The record will show that we had an order inhouse in August in 1966 from Menier for the Presbyterian Hospital Doctors Office Building for 600 units.

Q You said you believed that Local 28 was going to claim some part of it?

A We thought they might. We didn't know. That's why

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we called them in.

Q As a matter of fact, the discussion that you had with them, had to do with the plennum and only the plennum; is that correct?

A We discussed the entire unit. That's the portion they claimed. Yes; that's correct.

Q At that time do you recall a discussion that this was historically, the plennums were historically, customarily made in New York by the 28 or by workers in the bargaining units represented by 28? Do you remember the claim in the ujit at that time?

A The claim in the unit at that time was that it was replacing a piece of duct work.

Q You said it was replacing a piece.

A That's what he said, yes.

Q Do you recall Mr. Farrell or somebody at that meeting saying that this is nothing more than a metal box we make all the time?

A That was his claim.

Q This metal box is no different than any other metal box we make in the area, except that it's being attached to your patented items?

A That's his interpretation. Was his interpretation.

Q You say that on or about January 6, '67, you had a meeting with Farrell and Weigel and you couldn't agree

163 1 or arrive at some settlement --

2 A We didn't try to settle. We discussed the unit.

3 He said, "You can't bring it in that way," which is what

4 I said.

5 Q I just want th give it a point in time. You said

6 Farrell also stated that he would file charges or did

7 file charges against Carrier; is that correct?

8 A Yes.

9 Q Do you recall w t the charges were?

10 A That we were bringing in a unit that shouldn't be

11 brought in, that a portion of it should be made here.

12 This was his claim.

13 Q The portion of the claim was the plennum; is that

14 correct?

15 A Yes.

16 Q You said at that time that there was a meeting held

17 at the JAB.

18 A At the Building Trades.

19 Q It was held a the Building Trades Adjustment

20 Corporation?

21 A Yes, I beg your pardon.

22 Q Throughout your testimony you referred to a trade

23 or a trade board.

24 A Joint Adnustment Board.

25 Q Was the Joint Adjustment Board?

164 A That's correct.

Q That was the first step in the grievance procedure; is that correct?

A That's correct.

Q As a matter of fact, you had suggested, you told Farrell, you know your recourse, you can bring me up on charges; was that part of your conversation with him, also?

A Yes.

Q What were you referring to at this time?

A The Joint Adjustment Board, where we went.

Q You say Mr. Farrell made the opening statement or amplified the charges before the JAB; is that correct?

A He said we were brining in a unit that shouldn't be brought in here. That's what he said, in effect, in his own inimitable way.

Q Did he make any reference to violation of the contract?

A We wouldn't have been there, if he didn't think we were violating the contract.

Q Do you recall the violation?

A I don't remember, no.

Q If i suggest that he indicated that the plennum or the metal box was a piece historically and traditionally made by Local 28, would that refresh your memory

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as to his charge?

A He got very, very involved immediately that particular day, on the fact that we were making these in a non-union shop. So, it kind of went off on a tangent. That's when we asked -- the meeting did not last longer than an hour and it was much time in caucus, because I realized that with the approach and the reference to the non-union ship and the so-called wetbacks, which was his interpretation of what was going on, that a conclusion could not be reached before that group, so I asked for an adjournment and got it.

Q My question -- I don't want to have to strike that -- during his presentation did he state, in words or substance, that the violation he was speaking of was traditionally, historically the workers and the bargaining units represented by Local 28, made these plennums?

A Not there, but --

JUDGE CONSTANTINE: Don't go beyond the question. He did not say that, according to the witness.

THE WITNESS: Not that I recall, no.

Q Did he say that any other time?

A Yes.

Q When did he say that?

A He told us he wanted to make the plennum on the 37P, not on this unit, on the 37P, when we met him in

166 as to his charge?

A He got very, very involved immediately that particular day, on the fact that we were making these in a non-union shop. So, it kind of went off on a tangent. That's when we asked -- the meeting did not last longer than an hour and it was much time in caucus, because I realized that with the approach and the reference to the non-union ship and the so-called wetbacks, which was his interpretation of what was going on, that a conclusion could not be reached before that group, so I asked for an adjournment and got it.

Q My question -- I don't want to have to strike that -- during his presentation did he state, in words or substance, that the violation he was speaking of was traditionally, historically the workers and the bargaining units represented by Local 23, made these plennums?

A Not there, but --

JUDGE CONSTANTINE: Don't go beyond the question. He did not say that, according to the witness.

THE WITNESS: Not that I recall, no.

Q Did he say that any other time?

A Yes.

Q When did he say that?

A He told us he wanted to make the plennum on the 37P, not on this unit, on the 37P, when we met him in

167 meet with him after the Joint Trade Board in his office with the sheet metal contractors association and the mechanical contractors being there.

Q That was an extension of the meeting you had asked be adjourned?

A That's right.

Q This was a further attempt to resolve the differences between the parties?

A That's correct.

Q The differences between the parties up to that point was because Farrell, 28 claimed that the plennum, the metal box, was a customary, traditional item made by the 28 men; is that correct?

A That's right.

Q Your position was that you had to bring in a unit in one piece, and the plennum was to be made someplace else, that was the dispute, right?

A Yes.

Q With respect to the Police Headquarters job, did Carrier enter into some type of agreement with the Triangle Sheet Metal people to make that?

A No, they gave us an order for the Carrier portion, the Carrier unit, as per the New York agreement and they provided the plennum.

Q You shipped, as I understand, you shipped out the

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unit, 37P?

A You can't look at that unit and say what we shipped. It's an entirely different unit. The lower portion of a 37P has no resemblance whatsoever to what you have got there. It was 14 inches wide on that job. An entirely different piece.

Q That unit appears in one of the exhibits we had?

A That's this unit right here (indicating).

JUDGE CONSTANTINE: That's Exhibit what?

MR. BOGEN: Exhibit 7, indicating the item --

JUDGE CONSTANTINE: GC7.

MR. BOGEN: Indicating the number 37P.

Q That was the one we were talking about?

A That's correct.

Q You were shipping, as I understand it, the lower portion?

A That's right.

Q The upper portion is the metal box; is that correct?

A That's right.

Q Do you know if the metal box was, at that job, assembled at the jobsite?

A It was made at Triangle and shipped to the job.

Q It was fabricated at Triangle?

A Yes.

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Q Do you know whose plans and specifications they used?

A They used ours and they didn't follow them.

Q A dispute arose between Triangle and Carrier, with respect to the fabrication; is that correct?

A No, they fabricated them and they were too big and they did not fit together and that's what caused the leaks and the trouble, yes, that's correct.

Q Insofar as Triangle was concerned, was there a dispute that the specifications and plans given by Carrier were incorrect and inaccurate?

A I don't know what their claim was. We gave them certain tolerances to follow it and as far as we are concerned, they did not follow them.

Q Did you meet with people from Triangle?

A We sure did.

Q Did you meet with a Fred Werlick with respect to this?

A We never met with Fred, never talked to Fred.

Q Who did you meet with from Triangle?

A His brother.

Q Who is that? Is there more than one?

A There are two. You know that and I know that. There is Fred, there is Seymour, and I can't think of the third fellow. That's the fellow we met with.

170

Q Did you meet with any of the draftsmen or shop foremen?

A We met with the brother, whoever his name is, Charley, and whoever he had on the job, his superintandent and two fellows that are outside there.

Q At that time do you recall the Triangle claim that the specifications you gave them were incorrect or inaccurate and let to the malfunctioning of the unit at the headquarters? Do you recall their making that claim?

A I don't remember their claim, but our claim was that they did not follow the references in the tolerances.

JUDGE CONSTANTINE: Answer the question and don't make any speeches, please.

Q Do you recall what claim they made at all?

A No.

Q After these meetings did there come a time when there was a redesigning of the plennum, the box made by Triangle at the job at Police Headquarters?

A Yes.

Q Was that subject to a work order or an agreement of some sort?

A Yes, it cost us $10,000.

Q Did you hear my question?

171 1 JUDGE CONSTANTINE: He answered it. He said yes.
2 Q Do you have that document with you, by the way?
3 A No.
4 Q The additional funds or the additional money you
5 mentioned, $10,000, that was paid by Carrier to Triangle;
6 is that correct?
7 A That's correct.
8 Q That's correct, isn't it?
9 A That's correct.
10 Q That was paid as an addition to the regular contract
11 price; is that correct?
12 A We did not pay them to make those boxes. We paid
13 them to modify them. Because -- I think I am going to
14 make a speech --
15 JUDGE CONSTANTINE: No, you are not going to make
16 any speech.
17 THE WITNESS: I want to refer to the other document
18 that made us responsible for an end result, even though
19 we did not fabricate the plennum, the other document
20 made us fully responsible for a working unit. We had
21 no other way to get it, other than that.
22 Q You said you paid a sum of $10,000, which was not
23 initially contracted for?
24 A My memory said about 10,000, yes.
25 Q Does the company normally pay out additional sums

172 of money, when the other fellow makes an error?

A When you have a contract like we did, you do, yes.

Q The contract that guaranteed the functioning, did not run to Triangle, did it?

A It run to us.

Q To whom?

A Carrier.

Q Carrier's responsibility to whom, sir?

A New York City, the Police Office Building.

Q It had nothing to do with Triangle?

A No, but we had to fulfill an obligation to the people who built the building.

Q Your statements now with respect to this item then are that Carrier --

A Had no choice.

Q Excuse me. Triangle did not make the boxes correctly, did not make the plennum correctly?

A They did not maintain the tolerances.

Q They made them in such a fashion that most or all of the units leaked and were defective; is that correct?

A The units were tested when they left Tyler. When they were mated with the boxes, they leaked; that's correct.

Q They leaked on the jobsite?

A When they were mated on the jobsite, yes.

173 Q You are saying that that is because Triangle did something incorrect; is that correct?

A Not maintaining the tolerances.

Q The way you correct that is you pay Triangle $10,000 more money to correct the tolerances?

A Not more money. We paid them to modify the boxes so we could fulfill the guarantee.

Q Did you make any claims against Triangle at all [illegible] you claim they made the plennum or the box defectively?

A No.

Q You just paid them the $10,000?

A That's right.

* * * * *

175 Q With respect to the Police Headquarters job, you said that took five years, roughly, '68 to '73?

A Just about.

Q When did you or when was the malfunctioning of the units at the Police Headquarters discovered, in terms of a time?

A I would have to look at the records, Sol. I don't remember the exact date. It's somewhere in that period.

Q Without the month can you place what year?

A We are handling quite a few up there. I would guess it's somewhere between '70, '70, '69. I don't know. '70, '69. Dan would know more about it, outside.

Q How long did it take you to resolve the differences or this problem?

A We were back and forth for about a month, before we came up with a solution.

Q What was the solution, a modification of your plans and specifications?

A No, we didn't modify the plans and specifications. We gave them a way to put them together and make them work.

176 Q Did you at any time seek to have these fabricated by —

A They were all made. They were all made and delivered and on the job in one fell swoop.

Q There came a time in 1970 when the 37A was developed. That's the items we have here, is it, sir?

A Yes, sir.

JUDGE CONSTANTINE: When you say item, you mean Respondent's 17

MR. BOGEN: Yes, sir.

Q Before you started to market this in the New York

area, I believe you told us you had a meeting with Farrell, August 8, 1970; is that correct?

A Yes, sir.

Q Did you take written minutes of that or any notes on that meeting?

A Notes were made by a representative of Carrier, yes.

Q Do you have those notes with you?

A They are part of the -- Bauer's letter is in there, which outlines that meeting. It's part of your --

MR. GREEN: Excuse me for a second. That was one of the exhibits that was deleted.

Q Were minutes taken of that?

A Yes.

Q Was there any reason -- what was the purpose of meeting with Farrell with respect to the 37A item, in the face of the agreement you had already, regarding the Police Headquarters?

A It was impossible to go on. We said that at the meeting.

Q Is the only experience you had with the plennums being fabricated in New York the Police Headquarters building, up to that time?

A There was one other smaller job. The answer is yes.

Q What other smaller job?
A A job on Staten Island.
Q Who was the sheet metal worker who --
A Essex.
Q How many units were involved there?
A I don't remember. About a hundred, 120, maybe.
Q Essex is a sheet metal -- who is Essex?
A It's a sheet metal shop.
Q To your knowledge are they a member of the sheet metal association?
A I think so. I don't know.
Q To your knowledge did Local [redacted] represent the sheet metal workers employed by Essex?
A Yes.
Q Where were the units installed in Staten Island?
A In Staten Island. On the job.
Q What job? Do you recall?
A No, I don't know the name. I honestly don't know the name.
Q Is it a commercial building?
A It's a school, a City school, I think. Or a school. The City had something to do with it.
Q Where did Essex fabricate?

A Wherever their shop is. I think Long Island.

Q You shipped the units to the jobsite and the plennums were assembled at the jobsite; is that correct?

A You are asking -- I don't know if we shipped the units to the Essex shop or shipped them to the job. That I honestly don't know. The job was handled by a Carrier dealer. I don't even remember their name. They were handled by a Carrier dealer. They were shipped to Essex and they were shipped from the Island.

Q That was your unit?

A Yes.

Q That is 37P?

A 37P.

Q Did you have any problems with these hundred units?

A Yes, they had problems.

Q Do you have any written records of the problems you had with those?

A No.

Q Did you pay any additional monies like you had to pay with Triangle?

A No, we were not involved. It was a mechanical contractor who operated as a Carrier dealer. We were not involved directly. The units were sold to them by

Carlton Stewart, not by us directly, as they were on this job. We sold these directly, the Police Office building.

Q Do you know who contracted with Essex to fabricate and assemble the plennum?

A Evidently the mechanical contractor.

Q Who was the mechanical contractor, do you know offhand?

A No, I don't recall. I could find out.

Q As far as you were concernad, you don't have any knowledge of any returns or problems with them; is that correct?

A We had problems, because Fragnito was down several times.

Q What were the problems?

A I don't know. I wasn't on the job, Fragnito was

Q Is that one of the witnesses you have here?

A Yes.

Q Up to that point you had the Staten Island, the Police Headquarters and then you came to see Farrell about 37A; is that correct?

180 A Correct.

Q What were you seeking from Farrell at that time?

A We no longer wanted to be involved in plennums made

in New York. That is what we were seeking.

Q As far as you were concerned, you were obligated to have the plenums made here, under your agreement; is that correct?

A No.

MR. GREEN: I object. The agreement doesn't say that.

A This is a new unit.

JUDGE CONSTANTINE: If this is an agreement in the record --

MR. GREEN: The agreement speaks for itself.

JUDGE CONSTANTINE: --the agreement speaks for itself. I will sustain the objection.

Q As I understand it, you came to Farrell because you didn't want to make --

A We had a new unit which could not be made this way and we were determined that we were not going to bring it in and suffer the same situation.

Q You said that you told Farrell that you were having trouble selling the unit.

A Couldn't sell them.

Q What was the trouble you were having with respect to the sales at that time?

A Economically they would fall down. We were selling

them all over the country. We couldn't sell them in New York.

Q The unit couldn't be sold with the plennum being made in New York; is that what you told them?

A Yes.

Q With respect to that did you review with him the Essex situation?

A Well, he was familiar with the Essex situation. What we said to him was that since the sheet metal contractors, and it's in that particular minutes that you want to look at, were charging $40 a plennum, the unit was economically not feasible.

Q Mr. Contardi, isn't it a fact, now that you said it, that the difficulty was, you were concerned with the price that was being charged and not the functioning of the unit at all?

A You couldn't function, plus all the troubles we had, we pointed that out. Read the minutes.

Q Never mind my reading the minutes, sir, but isn't it a fact that you were disturbed about the price that Triangle had charged for the plennum?

A No, we economically could not fire, even if we could make it work.

* * * * *

Q Isn't it a fact that the unit, if it could be made economically, you had no objection to it, but because the unit was expensive, you were not in a competitive position—

A Both.

* * * * *

MR. BOGEN: Item 25 of the stipulation refers to the appendix.

JUDGE CONSTANTINE: GC2?

MR. BOGEN: GC2. It refers to an agreement between Acme and Three Boro. I indicated I didn't dispute the authenticity of that document, but the document referred to some certain specifications set forth in a document that was not attached. We have that document now, as I understand it.

It's a letter dated October 8, '73, and if that is made part of that appendix, I have no objection as to Item 25 of GC2.

JUDGE CONSTANTINE: Mr. Green, do you object?

MR. GREEN: No.

JUDGE CONSTANTINE: Mr. McGuiness?

MR. MC GUINESS: No objection.

* * * * *

MR. BOGEN: Before we leave that item, you say you inserted as an additional appendix. Is the letter somewhere?

MR. GREEN: Yes.

JUDGE CONSTANTINE: As part of GC2?

MR. GREEN: Yes. I lettered it as Appendix T-1. It does not have a tab but it has a marking.

In addition to that Mr. Bogen has furnished me a resolution, a proposed resolution made by Local 28 before the Joint Adjustment Board, regarding the charges against General Sheet Metal Works, Inc.; that is Appendix A of General Counsel Exhibit 2, and I would propose that this particular document, being the Union's proposal, be added and attached to General Counsel Exhibit 2, as Appendix BB, to complete the record, with respect to those charges.

JUDGE CONSTANTINE: Mr. McGuiness, any objection?

MR. MC GUINESS: No objection.

JUDGE CONSTANTINE: Mr. Bogen?

MR. BOGEN: No objection, your Honor.

JUDGE CONSTANTINE: In the absence of objection, that request is granted.

MR. GREEN: I would also propose a stipulation with

respect to BB, General Counsel Exhibit 2, and that is that General Sheet Metal Works, Inc., is bound to the collective bargaining agreement between the association and local 28, which is Appendix E, to General Counsel Exhibit 2.

JUDGE CONSTANTINE: Do you agree to that, Mr. McGuiness?

MR. MC GUINESS: Yes.

MR. BOGEN: No objection, your Honor.

* * * * *

A. C. CONTARDI

having previously been sworn, resumed and testified further as follows:

JUDGE CONSTANTINE: Mr. Contardi, you were sworn in yesterday and that oath is still binding on you today.

Mr. Bogen, complete your cross examination, please.

CROSS EXAMINATION (continued)

Q (By Mr. Bogen) Mr. Contardi, you told us yesterday that between approximately 1968 and '73, the Triangle was completing the plenum boxes for the Carrier unit to be installed at the Police Headquarters. Do you recall that?

A I do.

Q And that during this period of time, you recall at least one other job, in Staten Island, where Essex Sheet Metal had fabricated the metal box for the Carrier unit in approximately about a hundred units; is that correct?

A Yes, that's correct.

Q During that period of time were there any other jobs in New York City where a sheet metal contractor was fabricating the plennum or a metal box for the Carrier unit?

A I honestly don't recall. There could be one or two small ones, very small ones.

Q During this period of time do you recall Flannery Sheet Metal fabricating the plennum box for Carrier units to be installed in the City?

A I just said there could be one or two small jobs and probably he did. Flannery was doing some work at Presbyterian, probably he did ten or 12 units, something like that, yes.

Q Are you familiar with the circumstances under which the Flannery shop was fabricating the plennums?

A No, sir, I am not, that's why I hesitated. You reminded me of Flannery. I know we did some work, but it wasn't of any consequence.

Q Do you know anything about the circumstances?

A Not in detail, no, sir.

Q That was a situation where Carrier itself was directly selling its unit without the plennum attached; is that correct?

A That's correct.

Q The plennum was fabricated in New York City by Plannery; is that correct?

A That's correct.

Q Was that part, was that attributable, if you know, to the agreement we have in evidence, as GC's — I don't have the number, but the one involving the Police Headquarters?

A Probably, yes.

Q Did that have anything to do with that?

A Well, it's the only one we were working under, yes.

* * * * *

Q You also told us that in August of '72, you had a meeting with Mr. Pasquinucci in his office.

A Correct, same office.

Q August of '72?

A Yes, sir.

* * * * *

207 Q Mr. Pasquinucci at some time pointed out the disadvantates with respect to the loss of manhours on the fabrication of the plennums; is that correct?

A That's correct.

Q At that point you said he appointed a committee or told you he would appoint a committee; is that correct?

A Correct.

Q I would like to get that clear.

If you recall, did Mr. Pasquinucci say that he would appoint or refer this to a committee?

A He said he would appoint a committee.

Q Did he use, during this conversation, a review and research committee?

A No, he would appoint a committee. The review and research committee would come up later.

Q What was the purpose of the committee? Did he state it?

A Yes.

Q What was the purpose?

MR. GREEN: I object to the form of the question. I assume your question means, did he state what the purpose

208 is.

JUDGE CONSTANTINE: Yes.

Q Did Mr. Pasquinucci state the purpose of the committee that we were talking about?

A Yes.

Q What was the purpose that he stated?

A He said he was of the opinion that the unit would help out and he would like a committee which he would appoint to make a study of the -- whether it should or should not be considered and brought in and that was his purpose.

Q Was the purpose of the committee, did he state in words or substance, to consider whether or not the loss of work would be offset by the additional work, possibly?

A No, the subject of the meeting was whether or not we could bring this union into New York. He had the committee to review whether or not -- whether it could or could not be brought in, because of its effect.

Q What is the effect you were talking about, sir?

A Whether it would be beneficial or not beneficial to the union.

Q What would be not beneficial to it, sir?

A Not beneficial would be interference with the contract.

Q Interference with the contract?

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209 1 A Loss of work, yes.

2 Q What loss of work are we talking about or were you

3 talking about at that time?

4 A I wasn't talking about it. He was.

5 Q You said they were going to consider beneficial or

6 non-beneficial.

7 A Whether it would be beneficial or not beneficial

8 to the union.

9 Q You said not beneficial was based on loss of work

10 and interference with the contract?

11 A That's right.

12 Q In what way would the introduction, if you know,

13 interfere? What was said about the interference of the

14 contract?

15 A That, I don't know. He didn't say that. He just

16 said that he felt this unit — he had reached the point

17 where he felt this unit was beneficial, but he could not

18 under the contract he was operating on, bring it in, so

19 he was going to appoint a committee to make a complete

20 study and make a complete recommendation to him, so he

21 could then bring it to his executive board, which was

22 mentioned in the meeting.

23 Q During the meeting the committee's function, as

you understood it, was to validate it -- review it and make a recommendation to him?

A Yes.

Q That recommendation to him was ultimately to be reviewed by the executive board?

A I assume so, yes.

Q Did he mention the executive board to you?

A Yes.

Q Did he say it would have to be submitted to the membership?

A Not at that meeting.

Q He stated it would have to come before the JAB?

A Not at that meeting.

Q At any other meeting did he mention that?

A After the executive board turned it down, yes.

Q You told us that you met with the committee.

A Correct.

Q In September of '72, after the meeting; is that correct?

A Yes, sir.

Q If I suggested to you that the meeting was held in October, October of '73, the first meeting with the committee, at the industry fund, would that refresh

your memory or pinpoint the date any better for you?

A Not '73.

Q '72, excuse me, October 3rd, '72.

A It could very well be, was right at that point, yes.

Q That was the first meeting that you had with the committee?

A Right.

Q At that time, you told us yesterday, you discussed the advantages and disadvantages insofar as 28 and the industry was concerned with respect to the unit; is that correct?

A Correct.

Q What was it that you discussed with the committee?

A I referred to the Police Office Building that with the all air system that went into using this, that they had seven depths of duct work in the apparatus rooms, which was a tremendous amount of work, as compared with the high pressure systems we had seen, as one big advantage.

I also indicated that this was opeing up other markets and this stuff was being used where it wasn't used elsewhere throughout the country.

Those were the things I talked about and to bring

them into different markets.

Q What were the disadvantages you discussed with the committee?

A The only disadvantage was that we referred to the attempt that we were trying to work -- I think my testimony indicates yesterday --

212 JUDGE CONSTANTINE: Never mind yesterday. Just what did you say at this meeting. If you said nothing, say so, about the disadvantages.

A We had a unit there that was brought up from the Police Office Building. We discussed what that was doing, its faults and so forth. They were definitely disadvantages to us and the industry, because it certainly hurt the industry to have something like that installed on a job.

Q Did a question come up with respect to a disadvantage, that there will be a loss of the fabrication and a loss of the plenum to the unit?

A One of the men said that the loss here would be more than offset by the additional work you would get in the apparatus room.

* * * * *

Q During this meeting isn't it a fact that the committee raised with you very fiercely — I use the word advisedly — the fact that the fabrication of the plennum and the metal box was going to be lost?

A Not fiercely.

MR. [illegible]: I withdraw fiercely.

A Yes.

Q What did they say about the loss of fabrication of the plennum?

A I repeat, one of the men said that the loss of the plennum would be more than offset. I did not say this — by the additional work that they would get in the remainder of the system.

Q Do you know who said that?

A I don't know if it was Bill Connelly or Howard Dretz.

Q What else was said about the loss of the fabrication?

A That's all I recall. I was only there for an hour and a half.

* * * * *

Q When you left the meeting you said that a report was drawn up by the committee; is that correct?

A Yes.

Q Did you receive a copy of that report?

A I was given a copy, yes.

Q Thereafter, what is the next thing, if anything, you heard about the report, the action taken by the union, regarding the report?

A There was a -- I was told there was a meeeting with the executive board and the committee, which the committee appeared before.

Q Who told you this?

A Sturgis.

Q Did there come a time when you learned that the committee's report was rejected?

A Yes.

Q When you learned about that did you learn of the reason why the committee's report was rejected?

A Not really, no. I was just told it was rejected.

Q When was the next time that you had any knowledge or any contact with Local 23 regarding the proposal you have been discussing, the report or the substance report and the unit?

A Shortly after the holidays that year.

Q The holidays you are referring to are Christmas,

Thanksgiving?

A No, Christmas or the New Year. I had discussed with Dan and also Sturgis and I was told by both that Dan planned to bring the matter now before the Joint Adjustment Board for discussion.

Q You told us yesterday you had a discussion with Mr. Pasquinucci sometime around October of '73; is that correct?

A '73 now?

Q '73. We are beyond '72. 1973, sir.

A Yes, I did.

Q Isn't it a fact that between November or December of '72 and October, there were a number of discussions had over the phone, primarily between Mr. Pasquinucci and myself, regarding the situation?

A Only to relate his progress, yes or no. There were no discussions per se.

Q You mentioned that there was a phone conversation in October of '73, that you recall, and we discussed that yesterday.

A Yes, sir.

Q During this phone conversation you indicated that you informed Mr. Pasquinucci that you were advised there

was some trouble at the Van Etten job.

A Correct.

Q Did Mr. Pasquinucci in words or substance say to you that he knew nothing about that, that he would investigate it?

A No.

Q Did he say in words or substance to you at that time that he was not in a position to waive the provisions of his collective bargaining agreement?

A No.

Q Did he say to you in words or substance that that was the issue that he had to take up with the executive board and the membership at that time?

A No, he did not say that in that phone conversation.

Q You also mentioned a conversation that took place in Mr. Pasquinucci's office in November. Do you recall that discussion with respect to —

A November what?

Q November 1973. I'm sorry.

A Yes.

Q In that conversation, in words or substance, did Mr. Pasquinucci tell you that he could not waive the provisions of his collective bargaining agreement?

A Yes.

Q And that the matter of waiving the provisions of the collective bargaining agreement had been submitted to the executive board; is that correct?

A He may have, yes.

Q And that the matter had been submitted to the Joint Adjustment Board, also?

A Yes.

220

Q That he was attempting to get the parties, both the contractors and the union to waive the provisions of the agreement regarding the fabrication of the plennum; is that correct?

A I don't recall that specifically at that November 1973 meeting.

Q Do you recall him saying in words or substance that he was obligated to enforce, as he understood the collective bargaining agreement, and that it was out of his hands, with respect to waiving the fabrication of the plennum under the agreement?

A Yes.

Q Did he, at that time, speak of filing charges or being compelled to file charges if the contract were violated, insofar as the fabrication of the unit was

concerned?

A I don't recall that.

Q You do recall Farrell filing charges back in '66 when he claimed the contract was being violated, don't you?

A We were members.

Q You were members?

A Yes, but we were not in '73.

Q Do you recall Pasquinucci, Mr. Pasquinucci saying that if, in fact, an employer violated the agreement in terms of -- that is, employer in contractural relations with 28 -- violated the agreement as far as he was concerned and not fabricating it, he would have to file charges with the JAB, the Joint Adjustment Board?

A Not specifically, no.

Q Did he mention it in a general way?

A May have.

Q Pardon?

A May have.

Q During your various conversations with Mr. Pasquinucci after that day, the time you talked about the meeting in February of '74, your office, you spoke of another meeting in May of '74 in his office; is that correct?

A Correct.

Q In general, was the position stated by Mr. Pasquinucci that he thought, in words or substance, that he stated to you, that he thought the unit would bring in additional work for the industry and 28 people?

A Yes.

Q And he was concerned about the unemployment in the industry and this additional work might help alleviate it?

A Yes.

Q And he was prepared to recommend that the fabrication of the plennum under the collective bargaining agreement be waived or be modified in connection with the unit for that reason?

A Yes.

* * * * *

Q Mr. Contardi, yesterday you told us that there was some type of settlement or understanding reached with Mr. Pasquinucci regarding the Van Etten job.

A Correct.

Q Was the essence of that agreement, Mr. Pasquinucci would not have the union file charges against Three Boro with the JAB?

A My understanding of the agreement was, the job would proceed and we would write the agreement that was consummated in my office.

Q That agreement was an outline of some of the conditions under which the unit would be distributed in New York; is that correct?

A That's right.

Q That proposed agreement to be considered was between Carrier and Local 23; is that correct?

A Correct.

* * * * *

Q After the time the agreement, whatever it was, was reached, Local 23 did not file charges against Three Boro; is that correct?

A Right.

Q The agreement you spoke about yesterday was reduced to some kind of writing, a written document; is that correct?

A Correct.

Q At that time I think you said, as the Trial Judge mentioned, there was an understanding the agreement would be signed after July 1st some time; is that correct?

A Correct.

Q During the course of these discussions, in words or substance, did Mr. Pasquinucci indicate or state to you that this was subject to the executive board's approval and the membership?

A No, sir, no, sir.

Q If, in fact, it were not subject, why was the period of time put off until after July?

A Because of the election.

Q Wasn't it a fact that the matter had been reviewed by the executive board and by the membership prior to this period and it had been rejected; isn't that correct?

A A year or so earlier, yes.

Q And that in fact, if there were a change in the composition of the executive board, the matter may be approved, wasn't that the position taken by Mr. Pasquinucci?

A Not that I remember, no.

Q Did he state any reason why —

A He'd have to state that.

Q But there was no question it had to await —

225 A July 1st.

Q Right.

JUDGE CONSTANTINE: My notes show -- I want to be fair to the witness, he may not remember it now -- my notes show that Mr. Pasquinucci said he did agree to this but didn't want to sign it until after the election, because it might hurt him getting elected. That's what my notes show. I am not saying it's so. If that is a logical reason for postponing it until after July 1st.

MR. BOGEN: I asked the witness. The witness gave me whatever reason he recalled now.

JUDGE CONSTANTINE: All right.

Q There came a time when you met with the committee, the research and review committee, I believe you stated, in May of 1974; is that correct?

A Yes.

Q The committee was composed of the same parties, except, I think, Mike O'Connel. William Connelly had died in the interim period and Frank Rueckert had replaced him.

Did you review with the committee at that meeting the advantages and disadvantages of the unit coming, the Carrier unit coming in with the fabrication of the plennum not done in New York?

A Yes.

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Q What were the disadvantages that you mentioned or were mentioned at this meeting again?

JUDGE CONSTANTINE: I'd rather have him mention who brought up the disadvantages. The "or" has me confused.

MR. BOGEN: I am sorry, sir.

Q You stated there were advantages discussed and disadvantages discussed; is that correct?

(No response.)

Q Who brought up the advantages that were available?

A I brought up some, Norie Bretz brought up som, Berman brought up some.

Q Who brought up the disadvantages?

A All of us, I guess.

Q What were the disadvantages that were brought up?

A The possible loss of work for the omission of that box, as you call it.

Q Are you talking about the plennum?

A Yes.

Q Were there any other disadvantages?

A Not particularly, that I remember.

* * * * *

Q In words or substance did the committee emphasize that the loss of the plennum fabrication under our agreemant would increase or have an impact on the unemployment situation?

A They didn't mention that.

Q Pardon?

A They didn't mention that. They said the members might think it.

Q Is there any question that the loss of the fabrication would lose work for the men? Is there any question about that?

A It wouldn't lose work if it's not coming into New York.

Q If, in fact, this was available to do and they didn't do it, would that be a loss of work?

A Yes.

Q Wasn't that the chief and only concern, in terms of the negative aspect, the disadvantages of having the unit fabricating it, in the manner proposed by Carrier?

A Yes.

Q In response to that actual loss of work, what, if anything, did you say in regard to the possible additional work?

A It would more than offset the loss of the plennum.

Q Did you at that time or any time guarantee that there would be additional work if, in fact, the unit or if, in fact, the fabrication of the plennum were not made in New York?

A No.

Q Were you in a position at any time to negotiate a guarantee or trade, or agree to additional work with the unit?

229

A I am in no position to guarantee. I can indicate why it's so, but I cannot guarantee.

Q The units that we have been talking about, the 37P and A, I am referring to GC No. 7, in regard to this question, in regared to CFM's, I am looking at the fact sheet, which is a portion of GC7, run from 100 to 400 CFM's; is that correct?

A Correct.

Q When you indicated before, stated yesterday that there might be additional work if the unit were used, were you referring to any specific CFM unit?

A No.

Q If, in fact, the 100, the unit involved with 100 CFM, would that involve additional duct work?

A Used in this unit, because the system was all air, any one of them would involve additional duct work.

Q Would the 400 CFM involve additional duct work?

A Sure it would.

Q After May of '74, did you meet with the committee again?

A No, sir.

Q You stated that some time on July 1st, about July 19, 1974, you had a meeting with Mr. Stack, as the new president; is that correct?

A Correct.

230

Q At that time you were concerned or you were interested as to the status of your discussions with Dan Pasquinucci; is that correct?

A Correct.

Q The question was left open, I think you stated that Mr. Stack said that he would review the matter with the executive board; is that correct, and review the situation and advise you?

A He said he wanted to talk to his committee, get their opinion and talk to the executive board.

Q That's how the meeting ended?

A Yes.

Q Thereafter, there was a telephone conversation on Tuesday, July 23rd, the Tuesday after the meeting on the 19th, in that conversation did Mr. Stack, in words or substance say that it was the union's position that it would have to remain consistent with its collective bargaining agreement?

A It would proceed with the contract -- to my understanding, he said he would proceed as the contract dictated or as the contract provided --

Q Provided?

A -- in the contract.

Q The collective bargaining agreement?

A That's correct.

Q Did he say whatever remedies were available, he would pursue the contract?

A No, it was a very brief conversation, no.

* * * * *

REDIRECT EXAMINATION

* * * * *

Q Incidentally, with respect to the induction systems in the World Trade Center, does Carrier manufacture the same kind of system and have they sold such systems in

places in New York other than the World Trade Center?

A Oh, yes, yes, literally hundreds of thousands of units are in New York, of that type.

Q Of those systems, the plennums are fabricated or made where?

A Tyler, Texas.

Q Is there any exception from that?

A No.

Q On those kinds of systems, and those sold in New York, have there ever been occasions where plennums were fabricated in New York?

A No.

Q Have there ever been occasions where the plennums have been fabricated by the Local 23 shops?

A No.

Q What I mean by Local 28 shops, are shops that have contracts with Local 28.

A No.

Q Are there other types of air conditioning systems manufactured by Carrier, which have plennums?

* * * * *

A Yes.

Q What kind of systems would those be?

239

A We have a factory unit, which is a reheat unit, and several others of the same type, with a conduit.

Q Are those other types of systems sold or have they been sold in New York?

A Yes.

Q Do those systems have plennums?

A Yes.

Q Where are the plennums fabricated or made, with respect to those other kinds of systems?

A Tyler, Texas.

Q With respect to those systems, are the plennums fabricated locally in New York?

A No.

Q Who would install or who has installed those systems?

A Local 28 men.

MR. GREEN: I have no further questions.

JUDGE CONSTANTINE: Mr. McGuiness?

MR.MC GUINESS: No questions.

RECROSS EXAMINATION

Q (By Mr. Bogen) In connection with the induction unit and the other systems you mentioned, in what manner are they different from the way the 37P or the 37A would be used?

JUDGE CONSTANTINE: This is in connection with the last question or two by Mr. Green?

240 MR. BOGEN: Yes, the induction and the other questions he talked about.

JUDGE CONSTANTINE: Yes, I think that is proper recross, because I allowed him to go into it.

A They are repeat heat — they are recirculation units. They are recirculation with coils.

Q Are they understood to be periphery systems?

A Not necessarily.

Q How long have those systems been used or sold in New York?

A 1948.

Q Has there ever been any question or problems with respect to who was to perform the work or the fabrication of any aspect of that?

A Of the units?

Q Yes.

A No, no question on the units.

Q With respect to the system that was used that involves the 37P unit or the 37A unit, that is where there has been the question as to who was to fabricate the plennum; is that correct?

A Correct.

Q That has been from the beginning of the time you introduced the unit to the present time?

A Correct.

* * * * *

RAYMOND SKORUPA

called as a witness, having first been duly sworn by Judge Constantine, was examined and testified as follows:

JUDGE CONSTANTINE: Would you be good enough to give your name and address for the record?

THE WITNESS: Raymond Skorupa, 260 West End Avenue, New York City.

Q (By Mr. Green) What is your occupation?

A I am an architect.

Q Do you have any professional training in that respect?

A Yes.

Q Did you go to school?

A Yes.

Q What school did you go to?

A Virginia Polytechnic, Columbia University.

JUDGE CONSTANTINE: Let me say this. I have a son who graduated from Virginia Polytechnic. Does

that disquality me?

MR. GREEN: I don't think so.

JUDGE CONSTANTINE: I see some smiles. I am glad to see that.

Q Do you have a degree?

A Yes.

Q What is the nature of that degree?

A A Bachelor of Architecture Degree.

Q Are you currently employed and if so, by whom?

A I am not employed at the moment. My last job was with Isadore and Zachary Rosenfeld. I was a project architect there.

Q When did you work for Isadore and Zachary Rosenfeld?

A From April of '72 through December of '74.

Q What was your area of responsibility while working for Isadore and Zachary Rosenfeld?

A I was a project architect, which meant that on several jobs, one of which was the Van Etten Drug Treatment, the basic role of the project architect is the person who is responsible for the day to day operation of the job, in terms of producing the documents that are necessary, dealing with the client, administering the construction, et cetera.

Q You say producing the documents that are necessary. What type of documents are you referring to?

A Depending on the phase of the job. For instance, during the construction document phase, it would mean producing the documents from which the actual construction was based upon. That would include drawings plus specifications.

Q I show you what is marked in evidence as General Counsel Exhibit 2, Appendix P, and ask you if these are a portion of the specifications for the Van Etten job.

A Yes.

Q Could you tell me, in relation to these specifications, did the architectural firm work with another firm?

A Normally or I'd say generally --

JUDGE CONSTANTINE: The question is, did you work with another firm.

A Yes, we did.

Q With respect to the mechanical specifications, what was the name of the firm, the architectural firm, your firm, worked with?

A Henkins & Anderson, Incorporated, Richmond, Virginia.

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Q In making up these specifications, regarding the mechanical specifications, with whom were the discussions

made, in terms of making decisions as to what things to use or what not to use?

A The discussions would include FCU, who is one of the principals of Henkins &Anderson, Harley York.

Q Who is he from?

A Henkins & Anderson. Ben Fortner, Henkins & Anderson, it would include myself, Isadore Rosenfeld and in many cases a representative of the owner, who in this particular instance would be Rod DeVellis.

Q You notice that these specifications call for the use of the Carrier Moduline 37A units. Would you tell us how that came about?

A The decision to use the Carrier Moduline was in essence, a recommendation bythe engineering firm. We had a number of preliminary discussions in terms of general direction of what type of system to use and at some point we decided that the best system for this particular job would be a variable volume system.

Henkins & Anderson recommended to us that we use the Moduline unit.

Q When you say recommended to us, who do you mean?

A Us would be myself and Zachary Rosenfeld. We in turn represented that to the owner.

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Q As a result of those discussions was a decision in fact reached?

A Yes, to use the Carrier Moduline unit.

Q That decision is reflected in the specifications?

A Yes. Following that decision, then, would be the production of the documents that call for that particular piece of equipment.

Q In making the decision, the discussion leading to the decision or the making of the document, did or did not the contracting companies that were going to do the construction, participate in those dicussions?

A To my best recollection, no, the discussions to --

JUDGE CONSTANTINE: The answer is no. Go on to the next question.

Q Did the specifications, were these made up prior to a submission for bids by construction companies?

A Yes.

* * * * *

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Q With reference to the Van Etten job, did you go to the jobsite from time to time?

A Yes.

Q Did you go there on a regular basis?

A Yes, we had regularly scheduled job meetings that

generally took place every two weeks or less, if for some reason they were cancelled or they changed the date.

Q With respect to those jobsite meetings, was there any practice of taking minutes or making minutes?

247 A Yes, at every meeting, notes were taken generally by me and these, in turn, were typed up by my secretary and then distributed, generally to all people who had been present.

Q Where were such notes or minutes kept?

A The office, the firm I represented keeps a record of all the minutes, along with other documents that pertain to the job.

Q I call your attention to October of 1973.

In that month did you attend a jobsite meeting somewhere in the middle of that month?

A Yes. There were two job meetings that month, one on October 4th and one on October 18th.

Q Would you please tell the Court what you are referring to?

A Yes, what I am referring to is Rosenfeld's folder, which is entitled Van Etten Drug Treatment Job Meetings, and it contains all the minutes for the meetings I attended and notes taken during those meetings.

Q The meeting of October 18th, would you tell us who was present at that particular meeting?

A Should I give the list of -- I mean, everyone present?

Q Yes.

A Rod DeVellis, who is the director of the Van Etten Drug Treatment program Mr. Reyes, who is from Acme Climate Control, Sal Orfeche, myself, from Rosenfeld firm, Allen Wachtel, from Wachtel Mechanical Services, Harley York, Al Wanish and Arthur Vocal, both of those are from Three Boro Sheet Metal.

* * * * *

Q Mr. Skorupa, in or about the month of October of 1973, did you receive a request for a substitution?

JUDGE CONSTANTINE: I am sorry, did what?

MR. GREEN: Did he, Mr. Skorupa, receive a request for the substitution of the Carrier Moduline units for this job.

A There was no formal request, in the sense of submission of documents. There was an informal request which occurred at this meeting or a meeting after that. I can't recall which. To the best of my recollection, there were -- myself was present, Joe Reyes was present, Sal Orfeche was present and Harley York was present.

Joe Reyes verbally asked, would we consider --

MR. BOGEN: Your Honor, I wouldn't interrupt the witness normally, but it's beyond certainly the scope of the question.

JUDGE CONSTANTINE: The question is, was there a request. He can answer that yes or no. There was a request?

THE WITNESS: There was a request.

JUDGE CONSTANTINE: Let's go to the next question.

Q I would like you to tell us what the request was and who made the request.

MR. BOGEN: I object to this unless it is established that Local 28 was connected with this request.

MR. GREEN: This again is in the same nature of the kind of question that has to be raised by the Board in the Koch case.

There is also provision in the specifications which relate to substitutions. That obviously does speak for itself, but I am trying to show thatthis is not mere words that parties can ignore, that there was indeed something happening with respect to that, that shows exactly how the parties construed these documents and agreements.

JUDGE CONSTANTINE: That violates the rule of evidence rule. I will sustain it on that ground. You have put in evidence the specifications.

MR. GREEN: I make an offer of proof. That is that Mr. Reyes, in or about October 18th or at a subsequent meeting in late October, at a meeting in which Mr. Skorupa was present, verbally made a request to Mr. Skorupa that a substitute unit, that another unit or another manufacturer's unit be substituted for the Carrier units for the jobsite and that Mr. Skorupa rejected that request for substitution.

Q Let me ask you this: Is there a procedure in the specification which talks about how requests for substitutions are to be made?

256 A Yes, that would refer back to the --

MR. BOGEN: I object and ask the Judge to direct the witness that the question can be answered yes or no. He said in terms of clarity and I don't know where he is going to go.

JUDGE CONSTANTINE: He wanted to point out which particular specification had that. I don't think that is improper.

A The answer is yes, it would be Paragraph 3, sub-

section B.

JUDGE CONSTANTINE: I think that is a proper answer.

* * * * *

CROSS EXAMINATION

Q (By Mr. McGuiness) Mr. Skorupa, under the contract procedures, was a written request for a substitution for the Carrier Moduline unit ever made by anybody?

A No.

Q Mr. Skorupa, I believe you testified that you made the decision on the recommendation of Henkins & Anderson to use the Carrier Moduline unit; is that correct?

A Henkins & Anderson, yes.

* * * * *

A The major reason for recommending the Carrier Moduline has to do with certain performance qualities which it has.

JUDGE CONSTANTINE: What's that?

THE WITNESS: It has to do with certain performance qualities that the unit has. This conclusion is based upon Henkins & Anderson's long experience in variable volume systems and in their experience, have found that

the Carrier Moduline unit provided these necessary performance capabilities.

* * * * *

Q Was there another reason?

A The second one would be the shape of the unit as far as I, being an architect, would be concerned about how it fitted into the ceiling.

* * * * *

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REDIRECT EXAMINATION

Q (By Mr. Green) Was there any guarantee or warranty made with respect to these units by Carrier?

A To my best recollection, Carrier issues a guarantee of some sort, which would guarantee that the unit performs as we have specified.

MR. GREEN: I have no further questions.

JUDGE CONSTANTINE: Mr. McGuiness?

RECROSS EXAMINATION

Q (By Mr. McGuiness) Did the specifications require that the unit be installed in strict accordance to the manufacturer's instructions?

A Generally, that is the case. I will see if whether

or not in particular it refers to this piece of equipment.

Q I refer you to Paragraph 39E on Page 158-20.

A Yes.

* * * * *

LAWRENCE STURGIS

called as a witness, having first been duly sworn by Judge Constantine, was examined and testified as follows:

JUDGE CONSTANTINE: Please be seated.

Would you be good enough to give your name and address for the record?

THE WITNESS: Lawrence Sturgis, 196 Old Army Road, Scarsdale, New York.

DIRECT EXAMINATION

Q (By Mr. Green) Mr. Sturgis, what is your occupation?

A Presently I am the president of Advanced Air Control Corporation, which is a firm manufacturing items for the heating and ventilating and air conditioning industry.

Q Do you perform work in or about New York City?

A Yes.

Q Was there a time when you were a member of or in any way related to the sheet metal industry promotion

fund?

A Yes, I was the executive director of the sheet metal industry promotion fund for New York City, for the period of time, October 1965 or '66 to 1973. '67, I am sorry. '67 to '73.

Q Was that your only employment or were you employed at something else, also?

A No, that was my sole employment.

Q Prior to that what was the nature of your employment?

A Prior to that I was with Cosentini Associates, which is a consulting mechanical engineer in New York City.

Prior to that I was a mechanical superintendent for Uris Building Corporation in New York City.

Q Basically, what is the function or responsibility for consulting engineers in the industry?

A Well, consulting engineers, it's their duty to represent the client or the builder in terms of the heating, ventilating, air conditioning, plumbing and electrical work. To design that system which has the optimum operating advantageand keeping down the costs as best as possible.

Q With respect to your duties as part of that consulting engineer firm and also as part of your duties

as executive director of the promotion fund, the sheet metal industry, did you become familiar with the various types of air conditioning systems marketed in New York and elsewhere?

A Yes.

Q I would like you to describe briefly what the promotion fund of the sheet metal industry was or is, for that matter?

A The promotion fund is a trust that is set up in the industry, whereby for every hour worked by a member of Local 28, the contractor is obliged to remit a certain amount of money -- I am not familiar exactly what the amount is, I think it's about eight cents an hour for every hour worked, which goes into the promotion fund.

The promotion fund itself, as it was constituted then, was the responsibility of management, in terms of the employers, to make sure that that money is used on behalf of the sheet metal industry in promoting new ideas, methods, techniques, in providing research, in providing information to submit and to disseminate to architects, engineers and, you know, anyone else interested from the point of view of increasing work opportunities for members of Local 28.

Q What was your responsibilities as executive director? What were your duties and responsibilities?

A Well, the first was to administer the funds and basically to initiate programs that would be to the benefit of the sheet metal industry.

Q Did there come a time when you became involved with a study of the Carrier Moduline units?

A Yes. Well, it wasn't only of the Carrier unit, it was basically a study of the variable volume design.

Carrier, at that time, happend to be one of the prominent manufacturers of that system.

Q In part of that study did you participate in that study with some members of the union?

A I didn't participate. The committee was set up by Local 28. Three members were appointed and my job was to try and just make sure that I gave them whatever information that they required, to complete their studies.

Q Did you meet with those members from time to time?

A From time to time, yes.

Q Can you recall about how many meetings you did go and meet with those particular members?

A At least two meetings that I attended. I know that there were more meetings other than the two that I

attended.

Q Who were the members of that committee, the union members of the committee?

A The union members -- the chairman was William Connelly,and Howard Bretz and Richard Berman were members.

Q Who were these people?

A Well, Bill Connelly was a draftsman, at that time, before he died, was a draftsman for Universal Sheet Metal. He was what was considered their lead draftsman. He was also an instructor in the testing and balancing course which was given in the evenings for members of Local 28.

He held a fairly prominent technical position with the union. In other words, he was highly regarded for his expertise in the -- and knowledge, in the sheet metal industry.

Q Did he have a reputation of that nature?

A Oh, yes.

Q You talked about teaching. In what capacity would he be teaching or in waht context?

A For instance, in one case where in one agreement, where it was put in the Local 28 contract that testing and balancing would be done by members of Local 28,

Local 28, of course, wanted to make sure they had competent personnel to perform the testing and balancing.

Bill Connelly started the movement to start an instruction program at the apprenticeship school to make sure there was an adequate supply of testers and balancers.

He testified, also, for instance, when the City of New York changed its code, its building code back in around, I think, 1965, Bill Connelly testified on behalf of the Keyman's Guild, which is not an official branch of Local 28. It's a fraternity of draftsmen, of

274 1 which he was the president, and he testified on behalf
2 of the sheet metal industry in those matters that
3 pertained to a revision of the code, which applied to
4 the sheet metal and ventilating industry.
5 Q Did you have from time to time -- again talking
6 about Mr. Connelly -- when there were technical questions,
7 at that time, Mr. Farrell was president of Local 28;
8 is that correct?
9 A When I first started, yes.
10 Q When there were technical questions between yourself
11 and Mr. Farrell, would Mr. Farrell refer any types of
12 questions or --
13 A He ususally referred me to Bill Connelly, you know,

as a matter of -- I would explain thesituation to Bill, Bill would explain it to Mel and also give it, you know, point of view that he felt necessary to give.

Q You indicate that Mr. Connelly was employed as a draftsman.

What is the sketcher? What does the term sketcher mean?

A The term sketcher, as it applies to the sheet metal industry, are those individuals who do the complete layout and background, the structural, the architectural and to some extent the plumbing and piping, do the background work and the layout work in a given project, where it applies to the ventilation industry.

Q Is there a difference between the sketcher and the draftsman?

A Yes, I would say so.

Q Was Mr. Connelly --

A No, no, no, a sketcher, I think you would define it as a member of Local 28. Anyone can be a draftsman but not everyone can be a sketcher. I will put it that way.

Q How about Mr. Bretz, Howard Bretz? Did he do

anything other than being employed by a sheet metal company?

A Well, Howard, he was on the joint apprenticeship committe, when we sat in on meetings on that. He was a member of that and he also was heavily involved in training in the sense that he wrote a book on sheet metal drawing and things like that.

Q Do you know whether or not Mr. Bretz taught at any point in time?

A I understand long ago, back in the late '50's or the middle of 1950's, he was apprenticeship instructor.

Q Mr. Berman, did he do anything other than perform work for a sheet metal company?

276 A He assisted Bill Connelly as the instructor in testing and balancing.

Q Where did he do that function?

A The course was generally given at the sheet metal industry apprenticeship school over in Queens.

* * * * *

Q At or about the time that this committee started to sit, did you have conversations with Mr. Pasquinucci, Dan Pasquinucci?

* * * * *

THE WITNESS: Yes.

* * * * *

277

Q Can you tell us about when that conversation took place?

A I would say in the fall of 1972.

Q Do you recall where that conversation took place?

A At the offices of Local 23.

Q What did he say to you and what did you say to him, as best you can recall?

A I asked if a committee could be formed to study the matter of the variable volume system.

Q What, if anything, did he say?

A He said yes.

Q Did you have any subsequent conversation with Mr. Pasquinucci?

A Vaguely. You know, we talked about it several times.

Q Over what period of time did you have such conversations?

A During the fall of 1972, when the subject was going to be brought up based on the committee report.

Q What did you say to him and what did Mr. Pasquinucci

say to you?

A Well, I asked him if he looked upon it favorably, after reading the report that the committee come out with, and he indicated that he did.

278 Q The report that you are referring to, let me just show you the document, so that you are clear as to what you are talking about.

I show you what is in evidence as General Counsel Exhibit 2, Appendix I, and I ask if you can identify that document.

A Yes.

Q Can you tell me what that is?

A That's the report of the committee consisting of Richie Berman, Howard Bretz and Bill Connelly, where they made a recommendation that the acceptance of the Carrier Moduline variable volume system be fabricated, leak tested and calibrated.

* * * * *

279 Q Did there come a time when you made a proposal to Mr. Contardi regarding the use of the variable volume systems?

A There were certain qualifications that were given

to me that I was to transmit to the committee with regard to that acceptance of the Carrier Moduline unit might be accepted if Carrier would accept these conditions, certain conditions.

Q Who talked to you about that?

A Bill Connelly.

Q Did you do something after having that conversation with Mr. Connelly?

A I transmitted these qualifications to Mr. Contardi.

Q I would like you to tell us what the qualifications were and what the substance of the idea that you transmitted was.

* * * * *

A One was that the system would be promoted in conjunction with a perimeter suction, which included radiator enclosures around the building.

* * * * *

Q I show you what is marked as General Counsel Exhibit 10 for identification. I ask you if you can identify that.

A This is a letter from Mr. Contardi --

MR. BOGEN: I will object to it. The question was whether the witness can identify it. I don't want

to get the substance.

JUDGE CONSTANTINE: All right.

A Yes.

Q Would you tell us what that is?

JUDGE CONSTANTINE: It isn't necessary to say. My notes show what it is.

Q Would you tell us, did you receive that particular document?

A Yes.

Q From whom did you receive it?

A From Mr. Contardi of Carrier.

Q Did you transmit that document to anybody?

A No.

* * * * *

288 Q Did you keep the document or did you do anything with it?

A I transmitted it to the committee.

* * * * *

Q After receiving that document did you attend a meeting with the executive board of Local 28?

A Yes.

Q About when was that?

A That was in the -- towards the end of the year,

I think, or the late fall of 1972.

Q Where did that meeting take place?

A At the offices of Local 28.

289 Q I would like you to describe what took place at that meeting of the executive board, insofar as you were present, and what was said, and to the best of your recollection, who said what.

A I, at the meeting, presented what I felt was the best case that I could for having the variable volume system brought into New York.

Q What did you say?

A I presented the case from the point of view of the advantages that the system had to offer and what I felt was an increase in the net amount of work that would be done by the members of Local 28 and that I felt that the particular design of the variable volume system, as a particular design, was the basically the future of most designs that were going to be in the country and I thought-- I expressed the point of view that I felt that this type of system should be encouraged in New York.

Q Did any of the members of the executive board or those in attendance ask you questions or say things?

A Yes.

Q Would you tell us what was said or what was asked?
A The questions were centered around what they thought would be a loss of work opportunity by not manufacturing the plennum box that is attached to the unit.
Q Did you make a response to that?
A I agreed with them that if it wasn't made, that particular item would lose opportunities for members in that respect.

However, I thought as an overall system, I thought the variable volume system would more than make up for that particular loss.

* * * * *

Q At about that time that you met with the executive board, did you have any conversations with Dan Pasquinucci, regarding the questions?
A No -- well, yes and no. That's a difficult question to answer.
Q Let me make it more precise.

Did you receive a copy of the committee report, the three man committee report?
A Yes.
Q Did you ever discuss that report with Mr. Pasquinucci?

A Yes.

Q I would like you to tell us what was said between you and Mr. Pasquinucci regarding the report, the physical document.

A I asked him how he felt about it and he indicated he was favorable but he had to get the approval of the executive board.

Q Was it after that that you met or you attended a meeting of the executive board?

A Yes, around or during, I don't know whether it was before or after.

Q Looking at General Counsel Exhibit 10, for identification, the letter from Mr. Contardi to yourself, did you ever have a conversation with Dan Pasquinucci, regarding that particular letter?

A Not that I can recall.

Q Subsequent or about the time that you met with the executive board or subsequent thereto, did you hear of any action by the executive board and if so, who told you about it?

JUDGE CONSTANTINE: Let's find out first who told it to him.

Q Did anybody tell you what, if anything, the executive

board did?

A I don't remember exactly who, but I was just told it was turned down.

Q Can you try to recall who it was?

A I would say probably Bill Connelly.

MR. GREEN: Could you mark this for identification as General Counsel Exhibit 14?

(Document marked General Counsel Exhibit 14, for identification, this date.)

Q I show you what is marked as General Counsel Exhibit 14 for identification, and ask you if you can identify that document.

A Yes.

Q Can you tell me what that document is?

A It's a report I made to the board of trustees of the sheet metal industry promotion fund of New York City.

Q When did you make that report?

A February 1st, 1973.

* * * * *

293 Q Will you tell me whether or not this report represents your opinions regarding the Moduline units, from your study of those items?

A Yes.

Q Does this fairly represent your conclusions as to what the effect of the variable systems would have, if installed in New York?

A Yes.

* * * * *

Q Did you have a discussion with respect to the Carrier Moduline units?

A Yes.

Q Did you participate in that discussion?

A Yes.

Q About when did that take place?

A I would say early '73.

* * * * *

Early in '73 he says he discussed the Carrier Moduline system with that board.

Q Were union people present at that particular meeting?

A Yes.

MR. BOGEN: We sto stipulate, your Honor.

Q I would like you to tell me and tell the Court what

you said at that meeting.

A At that meeting I just provided a synopsis of the work we had done on the variable volume systems and urged that we adopt a favorable policy towards it.

Q Did you submit any type of written report to the Joint Adjustment Board?

A No.

MR. GREEN: I have no further questions.

JUDGE CONSTANTINE: That brings it ot Mr. McGuiness.

CROSS EXAMINATION

MR. MC GUINESS: Just one or two, your Honor.

* * * * *

Q (By Mr. McGuiness) Mr. Sturgis, you left your position with the sheet metal industry council in 1973, June?

A Yes.

Q Who replaced you at that time?

A Nobody, to my knowledge.

Q Has anyone ever replaced you in that position?

A To my knowledge, no.

Q Is the function still being carried out?

300

A Again, to my knowledge, no.

Q To your knowledge the function is not being carried out?

A You mean, is there a person called the executive director of the sheet metal industry fund?

To my knowledge, no.

JUDGE CONSTANTINE: No, of the council, are the functions of the council carried out?

THE WITNESS: I don't know. Not to my knowledge.

Q Is the promotion fund and the council the same entity?

A Yes.

Q You do not know whether the functions of the promotion fund are now being carried out as you carried them out, to data?

A No. Right.

Q When you were with the promotion fund I understand from the agreement, one of your duties was to make known the jurisdiction of the industry.

A Yes.

Q What did you do in carrying out thatfunction, Mr. Sturgis?

A Well, what we intended to do was promulgate the

agreement that existed between Local 28.

We would send out notices to the architect or engineering, you know, broadly, we would send them the whole agreement or parts of the agreement which may have referred to a particular case or we would meet with the architecht or engineer on particular items with regard to jurisdiction and we would explain to him any part of the jurisdiction which he felt was, you know, the architect or engineer may have felt unclear about.

Q Where did you obtain the information on which you based your information to the architects and engineers?

A From the labor management standard form of agreement that existed between Local 28 and the sheet metal contractors association of New York.

Q Did you obtain it from any other sources, except the agreement itself?

A No.

Q Was the information that you sent out, then, your interpretation of the agreement?

A No, it wasn't our interpretation. We tried to limit interpretation and just try and make somebody aware of what was existing, rather than provide an interpretation.

Q Did you consult with the parties to the agreement, with respect to its meaning at any time?

A Yes.

* * * * *

Q In the course of obtaining information of the kind you have just been talking about, Mr. Sturgis, did you ever have any conversations with Mr. Pasquinucci?

A Yes.

Q Did any of those conversations cover the Carrier Moduline units?

* * * * *

Q How many such conversations were there, Mr. Sturgis?

A Three or four.

Q Do you recall when they occurred, about when they occurred?

A No, it's hard. It's over the course of perhaps a year from the fall of '71 to the fall of '72.

Q In order not to take up the time of the Court any more than necessary, Mr. Sturgis, can you tell us what the substance of those conversations was, with respect to the Carrier Moduline unit?

* * * * *

Q In these conversations with Mr. Pasquinucci, Mr. Sturgis, did Mr. Pasquinucci ever say anything about whether or not the units as manufactured would be permitted in New York City?

* * * * *

306 A I would qualify that. He felt that if there were more work opportunities presented, you know, on a basis of being shown that it gave more work opportunities to members of Local 28, then he would favor it.

* * * * *

Q Mr. Sturgis, I think you testified earlier in your work with the promotion fund that you answered questions with architects and engineers.

A Yes.

Q In this period prior to leaving your position with the fund, were you asked questions about the Moduline unit by any architects or engineers?

A Yes.

Q Do you recall any specific instances of such question?

A Yes. I remember a case of the UN Building, the engineer was considering the use of a variable volume system and wanted to know at that time what was the jurisdiction in terms of manufacturing the unit assoc-

iated with the variable volume system. I had told him that it was in the jurisdiction of Local 28.

Q Was there any response to your statement to him?

MR. BOGEN: I will object to that, your Honor.

JUDGE CONSTANTINE: Sustained.

Q Do you recall any other specific instances of inquiries about the unit?

A There was one other instance I can recall in the case of, I think it's Columbia Presbyterian Hospital, where the job was completed, it did have variable volume units in, but additional small quantities of units were required for areas that were presently developed and the question again arose as to the jurisdiction and could it be that the boxes still had to be made in Local 28, to which I said, yes.

* * * * *

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Q Was anything else said in the conversation, Mr. Sturgis?

A No.

Q Were there any other specific instances that you recall with respect to inquiries about the units?

A Well, there was some specific inquiries, but most of them were broadly asked in terms of jurisdiction.

See, the question of variable volume is, you can always have a variable volume system in New York. There was never any problem with prohibition. In fact, the industry would encourage it. The question was always turned on whether or not a part or all of the variable volume units had to be made locally. That was basically the issue, not whether or not anyone preferred the system. Everyone seemed to prefer the system.

MR. BOGEN: I ask at this time that Mr. Sturgis' observations which are apparently his, and certainly don't bind 28, be stricken.

JUDGE CONSTANTINE: This just describes what the questions were that were asked of him. I will allow it.

* * * * *

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CROSS EXAMINATION

Q (By Mr. Bogen) In response to one of the questions raised by Mr. Green or Mr. McGuiness, you said you were having conversations with Mr. Pasquinucci, from about the middle or the fall of 1971, through '72; is that correct? Do you remember that answer?

A Yes.

Q You cannot shake your head. He has to write it down.

A Okay.

Q Did these conversations start to take place after Mr. Pasquinucci became president of Local 28?

A Yes.

Q I think we have had testimony on the record of if I suggested to you that Mr. Pasquinucci took office in April of '72, would that more or less clarify as to when your conversations with him took place?

A Yes.

* * * * *

Q There came a time, I think you told us, that you had a conversation with Mr. Pasquinucci about variable volume systems; is that correct?

A Correct.

Q During that conversation you indicated that he was going to appoint or submit the matter to a committee; is that correct?

A Correct.

Q Can you place when that conversation took place?

A The fall of '72.

Q Did you communicate with the committee to set up a meeting?

A No, it was the reverse.

Q The committee communicated with you?

A Yes. The committee that was appointed asked me to obtain certain information for them, to help them review --

Q When was the first time you had any contact with the committee?

A When they told me who the committee was, what they were going to do and then asked if I would obtain certain information relative to variable volume systems, so that they would be able to make their evaluation.

* * * * *

315 Q I am pointing now to what is Respondent's Exhibit 1, against the wall here. This is 37P --

MR. GREEN: No.

Q -- 37A, excuse me.

Are you familiar with the unit?

A Yes.

Q To your knowledge had the plennum or the box, the metal box part, been fabricated by Local 28?

A Always.

Q How long ago was that? What period of time would you say?

A I I understand your question correctly, since I

have been in the construction industry in 1960, Local 28 has manufactured the plennums before lineal diffusers and before most of the air conditioning systems.

* * * * *

319 Q I am talking about the plennum, the box portion of the unit.

When I talk about the unit I am talking about the three components. Now I am just talking about the metal box.

Do you understand that?

A Yes.

Q Is there anything different about this plennum portion than any other metal box?

A No.

Q From the 1960 date to the present day, have you seen hundreds of these made?

A Yes.

Q Is this made by Local 28, according to the collective bargaining agreement?

A Not that unit.

Q Not the unit, the box.

A Yes.

Q In the course of your conversations with Mr. Pasquinucci, after he became president, the first conversation, in words or substance did Mr. Pasquinucci state to you that the plennum or the box portion of any variable volume was traditionally and historically performed by 28 and covered by its contract?

A Yes.

Q Did you agree with that?

A Yes -- well, no.

Q In what respect didn't you agree with it?

A I agreed that it was a box, but I disagree that it was a routine box. That the variable volume system was far more sophisticated as a unit than the normal plennum above a lineal diffuser that we would normally associate that with.

Q That's the entire unit?

A Yes.

* * * * *

Q Do you recall the committee, the three men, coming up to your office on October 3rd?

A Sure.

Q At that time did you furnish them some written material, with respect to the variable volume units?

A Yes.

Q At that time did you have a discussion with them, with respect to your views?

A Yes.

Q At that time did they have a discussion with you, with respect to your views and the problem?

A Yes.

Q How long did that meeting last, when these discussions took place, do you have any idea?

A Well, it lasted for at least an hour and a half to two hours after I had levt.

Q You spent some time with the committee and then you left on your own or you were asked to leave, something of that sort; is that right?

A Yes.

Q During the course of that meeting were the advantages and disadvantages of the variable volume box discussed?

A Yes.

MR. GREEN: I am going to raise an objection, because I am not sure that the witness can understand that question, in terms of --

JUDGE CONSTANTINE: That's for the witness to decide. He must have understood. He has answered it.

I will overrule the objection.

Q Who stated the advantages and disadvantages, if you recall?

A Well, I stated my -- what I felt were --

Q Were the advantages?

A With my opinions of the advantages and disadvantages.

Q What did you state were the advantages?

A Obviously the manufacture of the box.

Q The plennum?

A The manufacture of the Moduline unit was what I

327 felt was the singular disadvantage.

Q Disadvantage?

A Yes.

Q In what sense was it a disadvantage?

A A disadvantage in the sense that -- well, since Carrier and others were not marketing the variable volume system in New York, we would have to more or less trade-off the manufacture of the variable volume unit for whatever else we could get out of the system.

Q Let me see if I can understand you.

You say you, the industry, the union, were to trade-off something.

A Yes.

Q The trade-off we are talking about is the fabrication of the plennum, the box?

A Yes.

Q Is that the box that had been historically, traditionally done, as far as you were concerned, since 1960?

A No, not as far as I was concerned. I just echoed the opinion of Local 28 and said it was. I told our architects and engineers that, but I felt the variable volume system was a little different.

* * * * *

Q With relation to the disadvantage of losing the fabrication of the box, what, if anything, was said about overcoming that or the disadvantages of giving up the fabrication?

A Well, it was the general opinion that hanging the unit as an individual unit; in other words, each unit had to be suspended by itself or hung by itself, the drafting, the shop fabrication and the amount of duct work necessary in a variable volume system would more than offset the manufacturing of the unit, recognizing at the time that we would more or less be giving up the fabrication of the --

Q Plennum?

A The variable volume unit.

Q Is it a fair statement that the basic consideration before you and the committee at this first meeting was the concept of giving up, waiving the fabrication of the plennum box which would lose work opportunities to be offset by possible or potential additional work if the unit came in altogether?

A No, because it wasn't possible. The committee had established that there would be more work opportunities established.

Q That is what I'm saying. Apparently, I didn't make my question clear. I don;t mean to press it.

You were suggesting the advantages, that there would be additional work, if the umit came in already put together, the three component parts as a unit; is that correct?

A Yes.

Q The unit coming in in one package, it is your understanding that there would be potentially additional work created for 28 members; is that correct?

330 A I object to the use of the word "potentially."

Q You thought it was really --

A You see, it was a trade. You see, if the unit was manufactured out-of-town, there would be more work in the other part of the installation of the system. That's the trade.

So, if you say it's a fact that you lose on one end and it's a potential gain on the other, it's no trade. I would be foolish to recommend something like that.

Q On the one side, the trade we are talking about is that there would be additional work. In your opinion, it was definite, it wasn't potential.

A Right.

* * * * *

Q After the October 16th meeting of the committee in your office - you say you were not there - did there come a time when you learned or received the committee's report, with relation to what they had concluded and what they recommended?

334 A Yes.

Q Can you tell us approximately when you received their report?

A I would say, approximately the date that it's dated, the committee report.

Q Unfortunately, Mr. Sturgis, the committee's report

is not dated. Maybe if I show you in one of the exhibits --

MR. GREEN: It's in the book. It's entitled, "Committee Report."

Q I show you Appendix I, to GC2, that's General Counsel Exhibit 2.

Is that the report that you had in mind?

A Yes.

Q You will note, Mr. Sturgis, there is no date on it.

A Yes.

Q Placing or using the October 16th date for the two witnesses in your office, using that as a point of reference, can you indicate now or can you state now approximately when you got the report, Appendix I?

A I would say, within a two-week period after that.

Q Between the first time you talked to Mr. Pasquinucci in September and the time you received the report, did you and Mr. Pasquinucci have a discussion regarding what was to be done with the report?

A Yes.

335 Q When did that take place?

A I would say, probably early November.

Q Where was that meeting held?

A I don't think it was a meeting. It was just a

request on my part to ask, "What happens next?"

Q Did Mr. Pasquinucci tell you what happened next?

A He said he had to get it approved by the Executive Board.

Q Did he tell you when it was going to be submitted to the Executive Board?

A Whenever he could put it on the agenda. The agenda was very crowded, but the first chance he could, he would put it on the agenda.

Q Thereafter, to your knowledge, was the report submitted to the Executive Board, with the recommendation?

A Yes.

Q Did you eventually find out the disposition or the position taken by the Executive Board?

A Yes.

Q Approximately, when was that?

A I would say, probably sometime in late November.

Q What was the Executive's Board decision, as related to you?

A Well, I got the report from Bill Connelly that the Executive Board had turned it down.

336 Q When you say they turned it down, in words or substance, they refused to waive their contract with respect to the fabrication; is that right?

A He said they turned it down.

Q He didn't go into anything further?

A No, -- no, I'm sorry. He did. That's when he gave me certain items that he felt that if it could be put in the form of a compromise to Carrier Corporation, would enable him or help him get it passed the Executive Board.

I transmitted those --

Q Just answer my question. I don't mean to interrupt you.

Some time, as you recall it, was it the beginning of November when you advised the Executive Board turned down --

A Right.

Q The thing that was being turned down was the fabrication of the plennum box; is that correct? They refused to waive the fabrication?

A Yes.

Q Thereafter, did you request a copy for the Executive Board to make a presentation?

A Yes.

Q Did you appear before the Executive Board?

A Yes.

Q Approximately, when did you appear before the

Executive Board?

A I would say, within a two-week period or so.

* * * * *

Q Was your appearance and presentation for Carrier's variable volume system or all variable volume systems?

A No, we wanted to allow two variable volume systems, so that we didn't create a propriety situation.

Q There was nothing special about the Carrier situation?

A No.

Q After your presentation, did there come a time, and I think you answered, there were some questions raised about it, and the Executive Board then informed you of a decision or made some statement to you; is that correct?

A No.

Q At that time, were you advised by the Executive Board that this represented a matter of a modification of the agreement and the matter should go before the Joint Adjustment Board?

A Yes. I don't know if the Executive Board -- somebody did. That was the basis of my letter to Mr. Flannery.

* * * * *

Q After your presentation, did there come a time when you left the Executive Board?

A Yes.
Q You were asked to be excused from the meeting?
A Yes.
Q Did there come a time you were called back to the meeting?
A Not that I recall.
Q Do you recall at that time being advised that the matter should not have come before the Executive Board, the matter belongs rightfully before the Joint Adjustment Board, since it involves a request to waive a provision of the agreement? Do you recall that statement being made?
A Yes.
Q Do you recall that the provision of the agreement dealt with the work traditionally and customarily performed by Local 28, which was the fabrication of the box?
A Yes.
Q The statement to you at that time was to refer the matter to the JAB, if you will, and let them consider it jointly. Do you recall that statement being made to you, in words or substance?
A Subsequent to my being there. Not at the meeting, but subsequent to my being there, yes.
Q Thereafter, did you request that the matter of

variable volume boxes be placed on the agenda for the JAB to be discussed?

A Yes.

Q Thereafter, did there come a time when the matter was placed on the agenda for the JAB to consider?

A Yes.

Q Did you attend that meeting?

A Yes.

Q Do you recall where that meeting took place?

A No.

JUDGE CONSTANTINE: According to my notes, he says early in '73.

Q You had said before, early in '73.

I show you GC Exhibit 2, Appendix W-1, which is already in evidence, Mr. Sturgis, and ask you if that refreshes your memory, when you attended the JAB meeting, regarding the variable volume units?

A Yes.

Q What date do you recall that the meeting took place?

* * * * *

Q When was the last time you had a discussion with Mr. Pasquinucci, with respect to this subject matter?

A Was before this meeting.

Q Before the Executive Board meeting?

A No, before the meeting of the Joint Adjustment Board.

Q At that time, was it Mr. Pasquinucci's position that the matter now had to be approved or was subject to the approval of the Executive Board and the JAB?

A No, it was more a one-sided discussion before that, where I had kind of felt at that point, it was a lost cause. Then I appeared at the Joint Adjustment Board, made my presentation there, and then I just withdrew from the item altogether.

Q What was the purpose of your appearing there?

A It's exactly as you said. At that point, it was recommended that it be taken out of the Executive Board's hands and brought into the Joint Adjustment Board meeting, so the industry could agree or disagree collectively on this particular item, rather than make it a one-sided union or one-sided management thing.

343

Q Was reference made again to the provision in the agreement dealing with traditional, historical, customary work done by Local 28?

A At the meeting with the Joint Adjustment Board?

Q Yes, throughtout this time.

A No. As I said, I made my presentation and left.

Q Is it true that you were there in attempt to get the parties to modify or amend your agreement?

A Yes.

Q And the position you wanted was the same before the JAB as it was before the Executive Board, was to try to have them waive the claims that the work was done historically by Local 28?

A Yes.

Q We are talking about the fabrication --

A No, I didn't ask that something that historically and traditionally made by 28 be not made. The variable volume unit is obviously a relatively new item in the industry. There is nothing historical or traditional about it.

A That is the whole unit?

A That is the whole unit.

Q I am talking about just the plennum box.

A I am talking about the whole unit. It's hard to answer that question.

Q The only portion that was being claimed to be fabricated was the --

A The whole unit, as I understand it.

Q The unit comes in with the three components we went through before; right? We are talking now about the claim made about the plennum, the box.

A No, the controls and the assembly of the variable volume unit has to be taken by a member of Local 28 and put into the box to make up the unit.

Q But it was the fabrication of the box that was in issue here, isn't that so?

A No, it's the fabrication of the unit, which is distinguished from a box.

* * * * *

351 Q It wouldn't make any difference in terms of function. Did you have any opinion with respect to function?

* * * * *

352 Q What is your opinion?

A The experience we found is that it is difficult to build a variable volume unit other than under strictly regulated and carefully supervised circumstances.

Q When you define or say "unit," what are you referring to?

A Well, we looked over --

Q I mean what are you referring to as a physical structure?

A As I said, the variable volume unit, it's very difficult to discuss as any one part of it. It's a unit of and to itself. It cannot be distinguished from what one part of it does. It's the whole air conditioning system contained in one box.

Q So, you are referring to a unit in your discussion, as being the control portions and the box?

A Yes.

Q This opinion that you have, with respect to performance of having pieces manufactured separately, is that a

353 result of your study of this question?

A No, not really. I would just say it was a matter of the people that we have interviewed and the manufacturers that we had interviewed or talked to in the course of studying the matter, who had found that there was a great deal of sensitivity to the unit and that the slightest disruption threw it off.

Q This study was, or these interviews occurred during the period of time of the Fall of 1972?

A Yes.

* * * * *

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Q Mr. Bogen asked you on cross-examination some questions regarding work traditionally or historically performed. I believe at one point you answered, "This is a new unit, it's a relatively new item."

When, to your knowledge, were such types of units as these variable volume units, first introduced or come into New York City?

354 A I would say, in the early '60s.

Q Have they marketed successfully, to your knowledge?

MR. BOGEN: Objection, Your Honor.

JUDGE CONSTANTINE: I will sustain that objection.

Q Do you know whether or not Local 28 shops have manufactured substantial numbers of boxes for variable volumes, and I mean by that, tens of thousands or thousands?

A Not to my knowledge.

Q To your knowledge, apart from the Police Headquarters Building, and, say, apart from a small number of jobs, in relation to Columbia Presbyterian, have the boxes been manufactured in Local 28 shops in connection with these types of Carrier variable volume units?

A Not Carrier, no.

MR. GREEN: I have no further questions.

JUDGE CONSTANTINE: It brings it to you, Mr.

McGuiness.

CROSS-EXAMINATION

Q (By Mr. McGuiness) Did I understand your testimony to be that other variable volume units did not have a control and defuser assembly similar to that of Carrier?

A Other manufacturers do not have a control similar to the Carrier unit. Conners is considerably different, Midco is different, Fluidtec, and the only ones that are very close are Titus and Carrier.

355

Q Prior to the introduction of the Carrier Moduline unit, had Local 28 made a box that was cut and fabricated in such a manner that an assembly, control and assembly, such as that used on a Carrier unit, could be attached?

A No, not to my knowledge.

MR. McGUINESS: I have no further questions.

RECROSS EXAMINATION

Q (By Mr. Bogen) Mr. Sturgis, you said 28 shops do manufacture plennum or boxes, just the box portion, comparable to the item we have here, 37A. Is that a fact?

A Yes.

Q How many shops would do that?

A Oh, at least ten, twenty.

Q You also indicated that these boxes could be made

under carefully supervised circumstances; is that correct?

A Yes.

Q Are you familiar with --

A Incidentally, that is not my opinion. That is the opinion of the manufacturer.

Q Are there, based upon your experience in the industry and your position with the fund, the Employers Fund, are there shops that have the carefully supervised circumstances that could produce it, to your knowledge?

A Not to my knowledge -- well, are there shops that could produce it? I would say, yes.

356

Q You say there are shops who are producing comparable boxes now?

A Yes.

Q About ten?

A Right.

Q In addition to those ten, you say there are other shops?

A There are ten or so other shops that are manufacturing other variable volume type units.

Q That's the entire unit?

A No, the assembly is brought in and the mechanisms are usually inserted into the plennum box.

Q What is the portion that is being fabricated in the shop, in contractual relationship with 28?

A All of them, I guess, theoretically.

Q You say there are shops doing it now.

A Yes.

Q And that the mechanism is brought in from some place; is that correct?

A Yes.

Q To your knowledge, in these ten or so shops, is this mechanism fabricated in the shop or brought in from outside?

A It's usually brought in from outside.

Q What is being fabricated, made in the shop?

357 A The part of the box that usually has the acoustic lining and houses or receives the mechanism that is put into it.

Q Is that the plennum box, comparable plennum box we are talking about?

A To some extent, right.

MR. BOGEN: I have no further questions.

FURTHER DIRECT EXAMINATION

Q (By Mr. Green) Is it to some extent different?

A As I said, I feel that the variable volume box is

just a little more involved than most other boxes. It's not a box, it's a unit. It has thermostatic control, it has the air pressure control, it has a bellows arrangement. It has what other boxes have, but it has much more.

Q The bellows and the control system go into the plennum in this unit, the 37A?

A Yes.

* * * * *

358

HOWARD BRETZ

was called as a witness by and on behalf of the Employer and, having been first duly sworn by Judge Constantine, was examined and testified as follows:

JUDGE CONSTANTINE: Please be seated.

Would you be good enough to give your name and address for the record.

THE WITNESS: Howard Bretz, 31 Quaker Street, New Hyde Park.

DIRECT EXAMINATION

Q (By Mr. Green) What is your occupation?

A I'm a sheet metal draftsman.

Q By whom are you employed?

A Triangle Sheet Metal.

Q Are you a member of any labor organization?

A Local 28, Sheet Metal Workers.

Q How long have you been a member of Local 28?

A Since 1941.

* * * * *

Q Mr. Bretz, have you ever written a book on the subject of drafting?

A Yes.

Q When did you write such a book?

A In 1972, it was finished and published.

Q Are you a sketcher, also?

A Yes.

Q Would you tell me whether or not there is any difference in function as to what a sketcher does in the industry, as opposed to a journeyman?

A I'm a journeyman. I can do anything with sheet metal.

Q In terms of working on a job, does the sketcher do things different than --

A He works on the drawing board, preparing the shop drawings. Unless he works in a small shop, and then he may do a lot of things.

Q Are sketchers paid more or less than journeymen, or do you know?

A I guess it depends on the capabilities. Generally

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more.

Q Would it be fair to say that a sketcher is, in a sense, a step or a promotional type of thing from a journeyman?

A I wouldn't -- I never considered it that way, but I think as far as some men want to do drafting and I guess they aim for that purpose, but there are some very capable sheet metal journeymen who, in my opinion, would make fine draftsmen, but they don't want to become involved with that kind of work.

Q Did there come a time when you became part of a Research & Review Committee?

A Yes, sir.

Q How did you become part of that committee?

A I was appointed by Mel Farrell.

Q When were you appointed to that committee?

A Approximately six years ago.

Q Did there come a point in time when the Research & Review Committee made a study of variable volume systems?

A Yes.

Q About when did that study commence?

A It was in 1972, I think. I have the dates on a record sheet that I have.

Q Who were the members of the committee at that time?

A Bill Connelly, Richey Berman and myself.

Q How was that study formulated? Who suggested or gave you the idea of making such a study? How did it come about?

A I think it was initiated by Larry Sturgis, from the Industry Fund office.

Q How did you go about making this study?

A Well, of course, being a sheet metal draftsman, we were -- all of us on the committee, actually, are full-time sheet metal draftsmen, and in key positions and so forth, so we were familiar with any type of new equipment that was on the market, and, of course, we got literature on it and we just read up a little bit more on it, to become more familiar with it, but I would say, the three of us were well aware of it, before we got notified about it.

Q Did you interview any people, take statements from people regarding --

A Regarding to what?

Q For example, talking to manufacturers, particular people.

A I know I didn't. I don't know if they did.

Q During the course of the study, did you have occasion to talk with Dan Pasquinucci, regarding the study?

A I would not say during the study, but after we got all of our information -- in other words, we had a free hand to get all the information on this as we could, and then we had a report when we had all of this data together.

Q Did the committee make such a report?

A Yes, we did.

Q I refer you to General Counsel Exhibit 2, Appendix I, and ask you if this is the report that was made by the committee?

A Yes, this is -- yes, I remember this.

Q Did you participate in the drafting of this report?

A Yes, the three of us did.

Q You will notice it is unsigned.

A No, but item 2 tells you the committee members right here.

Q Was this a unanimous --

A Yes.

Q A unanimous report?

A Yes.

Q There was no dissenting report?

A No, we went over all of these items and it was all

written up.

Q To whom did you present this report? Who was the report presented to?

A Well, that was gone over with the Chairman, President, Danny Pasquinucci.

Q Was there a meeting of the Executive Board at which you attended, in regard to this report?

363 A Well, this had to go through the regular form of business in the union, so we made a presentation to the Executive Board, right.

Q When you say "we," --

A The three of us.

Q Do you recall about when that presentation was made?

A I have the exact dates. Could I get my papers?

Q Go ahead.

Mr. Bretz, --

A Do you want the date?

Q Yes.

A That was October 12, 1972.

JUDGE CONSTANTINE: I lost the trend. October 12th is GC2, Appendix I?

MR. GREEN: No.

JUDGE CONSTANTINE: That one is not dated.

A That was the Executive Board meeting, the presentation of the Research & Review Committee of the Executive Board of the union.

Q Before I get into that meeting with you, at or about that time, in mid-October, did the committee contact or ask Mr. Sturgis to communicate certain ideas to Mr. Contardi, of Carrier?

A Not that I -- not to my knowledge.

Q At the Executive Board, were all three committee members present?

A Yes.

Q How was the thing presented?

A Well, we had slides, we had drawings, we had all kinds of visual aids, and it was quite a comprehensive study to have all of our information given to the Executive Board members. It was a comprehensive study.

Q Were there questions asked by the Executive Board?

A Oh, yes, yes.

Q Were those questions answered by the members of the committee?

A Sure.

Q Did the committee make a recommendation to the Executive Board at that time?

A Not at that time, because that was -- there was going to be another meeting, another Executive Board meeting.

Q So, this was a technical discussion, I take it?

A It was, yes.

Q Did there come a time when there was another meeting with the Executive Board, at which you were present?

A There was another meeting on October 16th -- no, that was -- November 21st, was another Executive Board meeting.

Q That is 1972?

A '72. Same year.

Q Were all the committee members present at that particular meeting with the Executive Board, as you recall?

A Didn't Bill -- I think Bill Connelly was missing at that time.

Q But you were there?

A Yes.

Q Do you recall whether Mr. Berman was there?

A Yes. I'm pretty sure that during this time, Mr. Connelly died.

Q I would like you to tell me what happened at the November 21, 1972 Executive Board meeting.

A I don't have any minutes on that.

Q I want you to tell me from your recollection.

A Well, we had made a suggestion to the Executive Board or recommendation that we accept certain conditions from Carrier Corporation in relationship to waiving a provision of our standard form of union agreement to fabricate the boxes, the plennums.

Q Would you please explain in more detail what qualifications or specifications were discussed at that particular time?

A Well, one of the main things that we were trying to do as a committee, if we were going to recommend a concession, let's say, to waive a portion of our agree-

366 ment, to fabricate something which we would normally have fabricated for many years, we had discussed with Carrier that they would promote finger duct return systems and also they were going to promote through their contacts with the consulting engineers, dual duct systems and peripheral systems.

Q Would you tell us what that means and why those ideas were present?

A It would offset, in our opinion, the members of the committee wanted to have some assurance of getting a

return of work, let's say, possibilities, by giving up some of the other work possibilities in the fabrication of the plennum.

Q To your knowledge, were those qualifications accepted by Carrier?

A Yes, to my knowledge.

Q At the Executive Board meeting, I take it that the committee made a recommendation; is that right?

A Yes.

* * * * *

Q You indicate that there was another meeting of the Executive Board.

A Yes, because there was so much doubt in accepting our proposal, so to speak, there was another Executive Board meeting on June 5, 1973.

Q What happened at that meeting? Did you attend that meeting?

A Yes, I attended that.

Q What took place at that meeting?

A That was when a proposal was made to have two jobs as a pilot project to find out if the possibility of getting the engineers' drawings to agree to what our thoughts were, because two jobs that were proposed as a

pilot project were going to use the variable volume units, and it was interesting to the members of the committee to see if they would use finger return ducts and whatever we had discussed as the possibility of disagreement.

Q Do you know what those two jobs were?

A Yes, the Lehman's City College and the U.N. Building.

Q Did anything else take place at this particular Executive Board meeting?

A No, no, not that I know of. As far as Research & Review, they must have had their regular business. Then we weren't involved. We left the meeting.

Q Did there come a time when the Executive Board made a decision, one way or the other, as to the proposal of the committee?

A Yes, they rejected the proposal.

Q When was that?

A At that meeting, it was voted on.

JUDGE CONSTANTINE: The June 5th meeting?

THE WITNESS: The June 5th meeting, it was voted on.

JUDGE CONSTANTINE: They rejected your proposal?

THE WITNESS: They rejected our proposal, yes.

Q After that June 5th Executive Board meeting, did you

369 1 attend a following general membership meeting?

A Yes.

Q Were the minutes of the Executive Board read to the membership for the purpose of getting approval from the members?

A Oh, they always are.

Q Did you make any comment at the point where --

A Yes, I did.

Q Tell me about it.

A I objected to the acceptance of the Executive Board minutes and I wanted to explain to the membership exactly what the Research & Review Committee wanted to try to do with two pilot jobs, to see if this was a workable solution, because the three members of the committee all agreed that there was a possibility of having this work and it was rejected -- the minutes were accepted by the membership, anyway.

Q The minutes of the Executive Board?

A Yes, which, of course, concurred with the Executive Board.

Q And were not concurrent with your opposition?

A That's right. It was an unpopular move on my part to do this, but I felt that I wanted to enlighten the membership a little more.

Q Do you know what, if any, kind of units were used

370 by the U.N. Building and Lehman College?

A No, I had nothing to do with it.

Q Incidentally, Mr. Connelly, with respect to Mr. Connelly, does he perform any type of task in the union other than being a journeyman or a draftsman and an employee?

A Mr. Connelly is deceased.

Q I meant at the time. In terms of teaching or things of that nature.

A He was involved in journeyman teaching for awhile, in the evening classes.

Q What about Mr. Berman?

A Mr. Berman is, too.

Q Did either of these two individuals, Mr. Connelly or Mr. Berman, have any sort of reputation regarding their experience or --

A Fine reputations.

Q When you say "Fine reputations," in terms of what?

A I would say, they were considered the tops in the business, both of them. In my opinion, anyway, and, I think practically anyone who knew what they were talking about, would have my opinion.

MR. GREEN: No further questions.

MR. MCGUINESS: No questions.

JUDGE CONSTANTINE: Mr. Bogen?

371 1 CROSS-EXAMINATION

2 Q (By Mr. Bogen) How long have you been a journeyman
3 sheet metal worker?
4 A Since 1941.
5 Q As a journeyman, what does your work entail? What
6 does the work entail, very briefly?
7 A You mean sheet metal drafting?
8 Q Sheet metal journeyman.
9 A Oh, sheet metal journeyman, we do the drawings, we
10 do the layout, we do the forming, cutting and bending of
11 all kind of duct systems and kitchen equipment products or
12 anything like that.
13 Q Is there any distinction between the term or
14 category sketcher and draftsman?
15 A A sketcher and a draftsman -- a sketcher is, as
16 far as I remember, too, it's an older terminology than
17 the -- most of the fellows are called draftsmen today, but
18 it's the same thing.
19 Q With respect to the function in the union, is the
20 journeyman who performs draftsmen work the same person
21 who --

A The same man.

Q I believe Mr. Green asked you about Mr. Connelly and Berman having taught at the school. Did you teach at the apprenticeship school?

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A Oh, yes.

Q How long did you teach at the school?

A I was the head of the Sheet Metal Department for a number of years, for the New York Trade School.

Q How many years?

A I'd say, about twelve years.

Q After that, were you connected in any way with the apprenticeship school operated by the employers and the union?

A Well, as a member of the Joint Committee, I'm always responsible. I hadn't been teaching at any evening programs or anything like that.

Q There has been some testimony that you were a trustee of the Joint Apprenticeship Committee; is that right?

A Yes.

Q How long have you been a trustee?

JUDGE CONSTANTINE: The only reason they brought this out is because of qualification. Are you questioning his qualifications?

MR. BOGEN: No.

JUDGE CONSTANTINE: Then don't go any further.

Q I believe you testified that Mr. Farrell appointed you to the Research & Review Committee.

A Yes, sir.

Q At that time, do you know who else he appointed to the committee?

373

A Yes, Richey Berman and Bill Connelly.

Q Was that the same committee to which the variable volume systems was referred for study?

A Right, right.

Q Who referred that to you for study?

A I would say, that — you're talking just now about this whole situation?

Q Yes.

A Danny Pasquinucci referred that to us.

Q Were you appointed by Mr. Pasquinucci on the committee?

A No, he kept the same committee that was in existence when he became president.

Q How many times did the committee meet in connection with the study of the variable volume box?

A This looks like eight times.

Q When was the first time the committee met?

A The first time was Tuesday, October 3, 1972.

Q Are you referring to some documents or are you testifying from your recollection, sir?

A No, I have all my -- I always write everything down, when we have a meeting.

Q Where did the committee meet?

A At the Sheet Metal Industry office.

Q Who attended that meeting, if you recall?

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A We had the full Research & Review Committee. Bob Schluter and Larry Sturgis and Gus Contardi was at that meeting, too.

Q How long did that meeting last?

A Oh, I don't know. I don't know. I didn't --

Q During the course of the meeting, were the advantages of the variable volume system discussed?

A I would say, sure. Sure.

Q Were the disadvantages in terms of Local 28 and the industry discussed?

A Yes, everything was always discussed, pro and con, right.

Q To your knowledge, who stated or who presented the advantages of the system?

A Well, in the initial letter we had from Larry, Larry

Sturgis, he pointed out many of the advantages which you have to agree with, because they are strict advantages, as far as function and everything go, and, I would say, that this is how -- we used that, more or less, as our criteria of the analysis for the pros and cons of this problem.

Q We are talking, Mr. Bretz, of the meeting of October 3rd.

A Yes.

Q Did he present the advantages at that time?

A Yes, we had the letter from him.

Q Did Mr. Contardi?

A Yes.

Q Did anyone present disadvantages to the system?

A I would say, during the meeting, that we worked out all of the possibilities both ways.

* * * * *

Q With respect to the fabrication of the plennum, what was the position taken by the committee in regard to that?

A Well, in regard to the fabrication of the plennum, we, of course, could only make a recommendation to the president and Executive Board --

Q I am talking about the meeting of the 23rd, Mr.

377 1 Bretz.

2 A Oh, we agreed —

3 JUDGE CONSTANTINE: 23rd?

4 MR. BOGEN: Excuse me, October 3rd.

5 A We agreed that the possibility of fabricating the

6 plennum by the Carrier Corporation could be agreeable to

7 us, if we could get some kind of a return in the other

8 end of it, which was the return fingers systems and the

9 promotion of the dual duct system by Carrier, which

10 offset a loss of some kind.

11 Q What loss are you talking about?

12 A The fabrication of that box.

13 Q Had members of Local 28 been fabricating boxes

14 similar to this, to your knowledge?

15 A Definitely.

16 Q How long had that been?

17 A For many years. I don't know the number of years,

18 but as far as I can remember, we have been fabricating

19 variable volume boxes and so forth.

20 Q Is there any difference, to your knowledge, with

21 respect to this box, referring to the plennum on 37P,

22 and boxes that had been fabricated or plennums fabricated

23 by the 28 members?

A As far as I can see, it's nothing but a sheet metal component. It doesn't mean anything to me. It's a simple thing to make.

Q As I understand the proposals that were being discussed with Mr. Contardi, Mr. Sturgis on the one hand and the committee on the other, was that the fabrication of the box was to be waived or being proposed that Local 28 wave its position; is that right?

A Right, right.

Q In exchange for that, what was being proposed?

A Well, the finger return system and the dual duct systems for the periphery, were going to be pushed by Carrier to the consulting engineers.

Q Is that where the additional work would come in to offset the work loss?

A We were not sure of that, which is why we wanted to try to get two pilot projects underway to see if this would be the result. We didn't know. We were hoping this, that Carrier's weight would go across to the consulting engineers, but you will never know this, as far as I can see.

Q To your knowledge, could the system, that is, the

Carrier Moduline unit, be used in a system without additional work?

A Yes, it could.

Q Was that the fear of the committee then?

A That was the fear of us, right.

Q On the one hand, was it the fear that you were waiving the fabrication of the plennum box and for the possibility of additional work?

A That was what we were always thinking about, right.

Q In what way, if any, was it proposed that the additional work be guaranteed or be assured in exchange for the loss of the fabrication?

A Well, one thing that Gus could never --

Q When you say "Gus," you mean Gus Contardi?

A I'm sorry, Gus Contardi could never agree to, was that this would happen, but he said he would see to it that they would promote this idea to the consulting engineers, but there is no way that he could assure that this could happen. We know that he couldn't, so that's why we agreed with him.

Q Did the committee make any decision or consensus after that meeting on October 3rd?

A Well, yes, we did. Then we laid that proposal up,

which we sent to -- report to Danny and then to the Executive Board. It went in a certain sequence, right.

Q Did the report contain a recommendation; is that correct?

A Right.

Q I think it was the recommendation that was sent to Mr. Pasquinucci; correct?

A Right.

* * * * *

Q What was the position taken by the Executive Board in words or substance?

A Well, it was their opinion that there would not be more work for members of Local 28 by our recommendation.

Q Was that specified as to why there wouldn't be work?

A Well, there were many things brought out. It was -- one of the things brought out was the loss of the fabrication, the fellows who are working in shops making these kinds of similar boxes, that there is a possibility that they would lose jobs, plus the fact that testing and balancing, more or less, would be cut way down and the supply duct feeding these units would not require that extensive a duct system, so there were possibilities of their doubts and the amount of work involved. That's why

we wanted to try to get some significant return duct system setup and maybe an all air system setup. We didn't know what the possibilities were. It was only an educated opinions of the three of us.

JUDGE CONSTANTINE: You are going way beyond the question. Do not make speeches. The question was, what did the Executive Committee say when they rejected your proposal. That's all. Don't go beyond the question.

Q You said, now, that questions were raised that men were already fabricating the plennum box; is that correct?

A Well, we did make show type boxes in one of our shops, right.

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Q Were there other shops that were making plennum boxes like this? Not necessarily --

A Not necessarily like that, but similar -- sure, we make plennum boxes.

Q In addition to the plennum box being made, was there any suppression or statement with respect to the plennum box replacing duct work in any fashion?

A Yes, there was.

Q What was that? What was said with respect to that?

A Well, these could be put up in tandem, and, of course, your duct run would be replaced by those plennum

pieces.

Q To your knowledge, could duct be replaced by the plennum box?

A Yes, it could. Very much of a possibility.

Q You say the matter was submitted, the report was submitted to the Executive Board, I belive you said, in November or November 21st, and then on December 6th; is that correct, '72?

JUDGE CONSTANTINE: My notes show only November 21st. I'm not saying I'm accurate. I don't know anything about a December 6th meeting.

Q To your knowledge, the matter was submitted at an Executive Board meeting on November 21st; is that correct?

A Yes.

385 Q Was the decision or the matter resolved at that time?

A No, it wasn't.

Q When was it resolved, if you know?

A Well, they had put that meeting off to a December 6th meeting of 1972, and the Research & Review Committee was not present at that meeting, but the Executive Board discussed this situation and it was still not, as far as I know, accepted or resolved.

JUDGE CONSTANTINE: My notes show that it was accepted or resolved on June 5, '73; is that right?

THE WITNESS: It was rejected on June 5th. Only a certain type of -- that was when we presented it in a different light of two jobs, two pilot jobs.

Q The June 5th meeting, did you attend that meeting?

A Yes.

Q At that time, it was ultimately resolved by the Executive Board, as far as the Executive Board was concerned?

A Right, right.

Q You said you attended the June 5th meeting?

A Yes.

Q Was a motion made and seconded at that meeting that new allowances in the Bargaining Agreement be made to allow the dual mixing box in the New York City area?

386 1 A Right.

2 Q Is that the motion or is that the action of the
3 Executive Board that was approved at the following
4 membership meeting?
5 A Right, right.
6 Q To your knowledge, if you know, what was the
7 allowance or the provision in the Collective Bargaining

Agreement that was being proposed to be changed or modified?

A That was the addendum portion of our standard form of agreement.

Q Does that refer to the historic and traditional work done by Local 28?

A Definitely.

Q Was the position taken at that time that the plennum, the fabrication, was customarily performed by the Local 28 people under that agreement?

A That was the whole thing in a nutshell, yes.

* * * * *

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STANLEY GRAYDON

was called as a witness by and on behalf of Employer and, having been first duly sworn by Judge Constantine, was examined and testified as follows:

JUDGE CONSTANTINE: Please be seated.

Would you please be good enough to give your name and address for the record.

THE WITNESS: Stanley Graydon, 1514 Flint Place, Crofton, Maryland.

DIRECT EXAMINATION

Q (By Mr. Green) Mr. Graydon, by whom are you

employed?

A Sheet Metal Workers International Association.

Q What is your capacity with the International?

A I'm an International representative.

Q Do you have any particular area of responsibility?

A The Jurisdictional Department.

392 Q What is your job or what are your responsibilities and duties, insofar as the Jurisdictional Department is concerned?

A To aid and assist in settling disputes between other trades and sheet metal workers.

Q You are familiar with the jurisdiction of various sheet metal locals?

A Yes.

Q Are you familiar with the Carrier Moduline units, 37A and 37P?

A Yes, I am.

Q Are you familiar with their installation throughout the country?

A Yes.

Q Who installs the units, those particular types of units wherever they're installed or wherever they're ordered?

MR. BOGEN: Objection, Your Honor.

JUDGE CONSTANTINE: If you limit the question to the New York area, I will allow it. I think that it goes beyond the complaint, as to the rest of the country.

I will sustain the objection solely on the ground that it goes beyond the complaint.

MR. GREEN: I will make an offer of proof through this witness, as an expert, that this witness will testify,

393 if allowed, that throughout the entire country, the model 37A and 37P Moduline units are installed at job sites by sheet metal workers represented by sheet metal locals of the Sheet Metal International Association, that they are so installed by such locals of the International as fabricated by Carrier in Tyler, Texas, such units to include the entire unit, including the boxes or the plennums, which has been described in this case.

In other words, they're installed as is, without question, throughout the entire country, by employees represented by sheet metal workers locals of the International.

* * * * *

MR. BOGEN: At this time, Your Honor, I would make an offer of proof.

JUDGE CONSTANTINE: Go ahead. I can't stop you.

MR. BOGEN: If the witness were permitted to testify, he would testify that the question of internal work rules, Collective Bargaining Agreements, jurisdiction and the disposition of those items are entirely a matter of autonomy to each of the locals throughout the country, and that there are various and different Collective Bargaining Agreements throughout the country, with respect to various different locals, sister locals and members of the IA, and different work rules and requirements, and that each stand by themselves unrelated to what the other does.

* * * * *

MR. GREEN: Mr. Reyes.

Whereupon,

JOSEPH REYES

was called as a witness, having been first duly sworn by the Judge, was examined and testified as follows:

JUDGE CONSTANTINE: Give your name and address for the record.

THE WITNESS: Joseph Reyes, R-E-Y-E-S, 53 Spencer Drive, New Rochelle, New York.

DIRECT EXAMINATION

(Mr. Green) Mr. Reyes, by whom are you employed?

A Acme Climate Control Corporation.

Q What is your position with that company?

A President.

Q Where is that company located?

A 49 Purchase Street, Rye, New York.

Q Would you please tell the Court the nature of Acme's business?

A Heating, ventilating, air conditioning contractors.

Q Now did there come a time when your company received a contract to work on the Van Etten Drug Treatment Center?

454 A Yes.

Q I show you what is in evidence as General Counsel Exhibit 2, Appendix R and ask if that is the agreement pursuant to which you performed work at the Van Etten Drug Center?

A Yes, it is.

Q That agreement is with Ormar, O-R-M-A-R Construction Company?

A Building Corporation.

Q Mr. Reyes, were you familiar with the specifications of the job at the time that you bid for it?

Incidentally, did you get that contract by way of bid?

A Yes.

Q Were you familiar with the specifications of the job at the time you made the bid?

A Yes.

Q Did there come a time when you made a contract with Three Boro Company, a company called Three Boro, relating to the Van Etten job?

A Yes.

JUDGE CONSTANTINE: That is the one that is a party to the contract?

MR. GREEN: That's correct.

Q (By Mr. Green) Will you tell me whether or not that was subsequent to the time that you entered into a contract with Omar?

455 A Yes.

Q Incidentally, was that -- your contract with Three Boro, would you tell us whether or not that was the result of a bid?

A Negotiations was more like it.

Q I would like you to tell the Court what work Three Boro was assigned to do at the Van Etten job pursuant to your contract with Three Boro.

* * * * *

THE WITNESS: Three Boro was to supply and install all the sheet metal work for the project as described and shown on the plans for the project drawn by the engineers.

Q (By Mr. Green) Did Three Boro have any responsibility with respect to Carrier Moduline Units?

* * * * *

457 JUDGE CONSTANTINE: That is a good point. First let him answer the question, is there anything in the contract about what he was talking about, the contract between you and Three Boro?

THE WITNESS: Insofar as what?

Q (By Mr. Green) The Carrier Moduline Unites?

JUDGE CONSTANTINE: How would you find it in there?

THE WITNESS: This refers to the contract drawings as the M-1, M-2 and to the specifications which specify the Moduline.

JUDGE CONSTANTINE: That isn't helpful, can't you ask the witness to point out the exact clause?

Q (By Mr. Green) This contract is written and incorporates by reference the specifications for the job --

458 JUDGE CONSTANTINE: Are they in the record?

MR. BOGEN: Yes, they are.

JUDGE CONSTANTINE: Tell him to point out what the specifications are.

THE WITNESS: Where are the specifications?

JUDGE CONSTANTINE: Before he gets the specifications, first, I would like him to point out in the contract that part of it that refers to the specifications.

MR. GREEN: He may have to put his fingers in two places.

JUDGE CONSTANTINE: I understand it is in two places. Let's take one place at a time, where in Appendix T, does it refer to the specifications?

THE WITNESS: On page 2 article 2.

The subcontractor shall furnish and install duct work as per plans and specifications and as per your quotation dated October 8, 1973, copy attached.

JUDGE CONSTANTINE: Where in the copy is it?

THE WITNESS: The copy is on the first paragraph, "We herewith confirm your verbal agreement to furnish labor and material as per specifications and mechanical drawings M-1 and M-2, dated 8/8/73 as prepared by Henkins and Anderson, Consulting Engineers".

* * * * *

462 Q (By Mr. Green) Mr. Royes, did there come a time when your company started to perform work at the Van Etten job

site?

A Yes.

Q About when?

JUDGE CONSTANTINE: Speak louder please.

A Yes.

Q (By Mr. Green) When did your company begin to perform work?

A October, sometime.

JUDGE CONSTANTINE: October what year?

THE WITNESS: 1973.

Q (By Mr. Green) Were there job site meetings at the job site on any basis?

A Yes, there were.

Q Now could you tell us what those job site meetings, how often did they occur?

A Were supposed to be every two weeks. They occur every two weeks, give or take -- whenever the architect felt that a job meeting was needed he called one and that was about it.

Q Were there minutes taken of those job site meetings?

A Yes, there were.

Q Were those minutes distributed?

A Yes, they were.

* * * * *

Q (By Mr. Green) Did you attend a meeting at the job site in or about sometime in October of 1973?

A Yes.

Q Could you tell us to your best recollection who was present at that meeting?

A I don't recall everyone that was present. I recall the architect, the general contractor, myself, a representative or two from Three Boro and several other people that I can't recall.

* * * * *

4653 **Mr. Reyes, do you know a man named Ted Johansmeyer (phonetic)?**

A I know of him.

JUDGE CONSTANTINE: What is his name?

MR. GREEN: Johansmeyer.

Q (By Mr. Green) Was he an employee at that job, the Van Etten job?

A Yes.

Q Who was he employed by?

A Three Boro.

Q What was he employed as?

A A sketcher.

Q What the function of a sketcher on such a job?

A He is to make plans of duct work to be fabricated and installed subject to the job conditions, he is supposed to go to the job and check that the duct can be installed as designed.

Q Does he make drawings?

A Yes, he does.

Q What kind of drawings would he make?

A Blueprints.

Q What were those blueprints, what would they be used for?

A As I said before, to fabricate the duct work and to install it.

Q Did there come a time when you had a conversation with Mr. Johansmeyer, regarding the Moduline Units?

MR. BOGEN: Objection.

MR. GREEN: I would like to speak before you rule on that if you are inclined to sustain it.

* * * * *

MR. GREEN: I offer to prove that that if this witness were allowed to testify that on or about October 13th, he had a conversation with Mr. Johansmeyer at the job site and Mr. Johansmeyer being an employee of Three Boro employed as a sketcher and Mr. Johansmeyer said he was refusing to perform his services by refusing to sketch or would not sketch

in the Carrier Moduline Units.

JUDGE CONSTANTINE: Is that the end of the offer of proof?

MR. GREEN: Yes.

JUDGE CONSTANTINE: I adhere to my ruling.

* * * * *

471 Q (By Mr. Green) After your conversation with Mr. Johansmeyer, did you have occasion to look at the sketches of this job?

A The tracings, yes.

Q What did you observe, if anything?

A The Moduline Unites had been erased from the tracing.

Q Who was the one who made those or who making those tracings?

MR. BOGEN: Objection, Your Honor. If he knows. There was no testimony that he was there when it was made.

Q (By Mr. Green) Do you know who was the one who was to make the tracings on these sketches?

A I assume it was Ted.

MR. BOGEN: I ask that that be stricken because the witness has made an assumption.

JUDGE CONSTANTINE: Wait until he finishes the answer.

You assume what?

MR. BOGEN: He assumed it was done by, Your Honor.

THE WITNESS: Right, because he told me.

JUDGE CONSTANTINE: In determining if they were done by Johansmeyer or not, I think he can say what he knows.

472 1 THE WITNESS: He said he had erased Modulines from the sketch, that is from the tracing.

So I assumed he had drawn them in.

Q (By Mr. Green) When you say he erased them from the sketch, you mean Mr. Johansmeyer?

A Right.

JUDGE CONSTANTINE: I will adhere to my ruling that I think it is admissible. You have connected it but your rights are saved, you get an automatic exception, Mr. Bogen.

MR. BOGEN: Thank you.

MR. GREEN: Would you mark this?

JUDGE CONSTANTINE: According to my notes it should be General Counsel 16.

(The pending letter was marked as General Counsel 16 for identification.)

Q (By Mr. Green) Mr. Reyes, I show you what is marked General Counsel Exhibit 16 for identification and ask you if you can identify that document?

A Yes.

Q Would you tell me what that document is?

A A letter that was sent from us the Acme Climate Control Corporation to Three Boro Metal, informing him that --

MR. BOGEN: Excuse me, Your Honor.

JUDGE CONSTANTINE: That's enough. It is a letter from Acme to Three Boro. He can't describe the contents until the letter is in evidence.

I am not saying I won't admit it.

MR. MC GUINESS: What was the date of the letter?

MR. GREEN: February 15th.

JUDGE CONSTANTINE: October what, 15th?

MR. GREEN: February 15th.

JUDGE CONSTANTINE: Of which year?

MR. GREEN: 1974.

I will offer it in evidence.

MR. BOGEN: I object to the relevancy of the letter and also with respect to a letter being sent from Acme to Three Boro, that is no way binding.

JUDGE CONSTANTINE: I'll have to look at it before I can pass on that objection.

I think this is admissible to show if they were going to perform a contract and if they were ready, willing and

able to perform on it.

(The pending document General Counsel 16 was received in evidence.)

MR. GREEN: Would you mark this as General Counsel Exhibit 17 for identification?

(The pending document was marked GC 17, dated February 21, 1974.)

Q (By Mr. Green) Mr. Reyes, I show you what is marked General Counsel Exhibit 17 for identification and ask you if you can identify that document?

A This is a letter sent to us from Three Boro Sheet Metal, in answer to the letter we had sent to them previously.

Q The letter that is in evidence as General Counsel Exhibit 16?

A Yes.

MR. BOGEN: No objection in light of your ruling before, Your Honor.

* * * * *

(The pending document was marked as Exhibit 17 in evidence.)

MR. GREEN: Would you mark this as Exhibit 18?

(The pending document was marked as General Counsel Exhibit 18 for identification dated February 25, 1974.)

Q (By Mr. Green) I show you what is marked as General Counsel Exhibit 13 for identification and I ask if you can identify that document?

A Yes.

Q Would you tell us what this is?

A This is a letter sent to Three Boro to verify a telephone conversation that was made.

MR. GREEN: I offer General Counsel 13.

* * * * *

(The pending document General Counsel Exhibit 13 was marked in evidence.)

Q (By Mr. Green) I show you what is again General Counsel Exhibit 2 Appendix "C" and ask you whether or not that is the purchase order for the Carrier Moduline Units?

A Yes.

Q Is that something from your company?

A Yes, it is.

Q Then when you purchased or when you sent the order to Carrier, was that for the entire unit or the components, what was it for?

MR. BOGEN: Objection, the order is in evidence. I didn't object to that and it speaks for itself.

MR. GREEN: The order is written in technical language.

JUDGE CONSTANTINE: I will let him interpret the order.

THE WITNESS: It was for the complete unit as we understand it.

477 Q (By Mr. Green) The complete unit?

A Right.

Q That is the unit with the plenum box attached?

A Yes.

JUDGE CONSTANTINE: He just pointed to something, the record should show that it is Respondent's Exhibit 1, even though it is withdrawn.

It should be clear that you are referring to the actual physical Exhibit 1 which is here in the room.

Q (By Mr. Green) Now, did you at any time make any arrangements to have -- pursuant to that purchase order of the Carrier Moduline Units come in component parts to be fabricated somewhere else?

A No.

Q Did you at any time enter an agreement with Three Boro to allow Three Boro to fabricate the boxes?

MR. BOGEN: Objection, Your Honor. The agreement between Three Boro and the modification, they speak for themselves.

MR. GREEN: I don't know that they speak for themselves.

JUDGE CONSTANTINE: I will allow it in case Three Boro claims that they had a right to fabricate. I want to know if they did or not.

THE WITNESS: Ask the question again.

Q (By Mr. Green) In your agreement with Three Boro, did you give Three Boro the right or was there an arrangement between you and Three Boro that Three Boro would fabricate the box, the plenum?

A No.

* * * * *

CROSS EXAMINATION

* * * * *

Q (By Mr. Bogen) In response to something that Mr. Green had asked you, you say you saw the sketches, the drawings for the Van Etten job at a time when there was erasures on it, is that correct?

A Yes.

Q Had you seen the drawings before that time?

A No.

Q Did you examine the erasings? Withdrawn.

Do you know the date you saw the erasings yourself on then?

A The same day when we had the job meeting, the 18th of October 1973.

Q Prior to that time you said you had not seen them?

A No.

Q I show you what is General Counsel's Exhibit 2, the Appendix that we have added.

I believe it is marked T-1, is that right, Mr. Green?

MR. GREEN: Yes.

Q (By Mr. Bogen) The quotation dated October 8, 1973?

483 A Yes.

Q That is marked T-1, do you recall reading the first paragraph of that letter before?

A Yes.

Q And in that document where is the statement of the -- withdrawn.

In the agreement between you and Three Boro, you speak of a quotation at page 2, do you see that, sir?

A Yes.

Q Now what does the word quotation mean?

A Well, quotation, we refer to that as a quote, that is the price given on something.

Q You mean — we agree it meant price of the item?

A Yes.

Q Where did the price of the item appear on the October 8th letter that is T-1?

A In paragraph one, two, three, four, five.

Q That was the price for the — was that the price as you understood it for the items set forth in paragraph five?

A Yes.

Q You read paragraph one before indicating a reference to the plans and specifications.

Would you read paragraph four, was that part of the price structure?

JUDGE CONSTANTINE: Take a look at it first.

484 THE WITNESS: Yes, it was.

Q (By Mr. Dogen) Would you read paragraph four?

A We take exception to the following, removals of duct work, cutting, patching, painting, housekeeping, pipe sleeves, testing and balancing, thin tube enclosures, plenums for Carrier Units, supply outlets (fire dampers through interior walls, dunnage steel, flashing, hold harmless insurance, bonds and over-time).

Q That was your understanding that the plenums for the Carrier Units were to be fabricated by Three Boro on this

quotation?

A No, sir.

Q I show you General Counsel's Exhibit 17 and I ask you to read to yourself paragraph five — excuse me, paragraph four on page 1.

A Yes, what about it?

Q And having read that, with respect to the quotation, wasn't it a fact that Three Boro was quoting the fabrication of the plenums included?

A It's excluding.

Q It's including?

A No, it is not. The paragraph takes exception to the following. That is, he was not quoting to fabricate the plenums.

Q Wasn't he quoting in his last paragraph on GC 17 that

485 the plenums, that they came with the unit but that he was claiming to make them, isn't that the gist of GC 17, the last paragraph?

A No.

Q Prior to February 21, '74 the date of GC 17, you have it in front of you?

A Yes.

Q Prior to that time did the question come up with respect

to Three Boro's fabricating the plenums for the units?
A Yes.
Q Wasn't it Three Boro's position at that time as set forth in the February 21st letter GC 17, that they were under the impression that it was to fabricate the plenums?
A No, sir.

* * * * *

DANIEL FRAGNITO

was called as a witness, having been duly sworn by The Judge, was examined and testified as follows:

489 JUDGE CONSTANTINE: Be good enough to give your name and address to the reporter.

THE WITNESS: Daniel Fragnito, 202 Moulder Road, Solvay, New York.

DIRECT EXAMINATION

Q (By Mr. Green) Mr. Fragnito, by whom are you employed?
A Carrier Corporation.
Q In what capacity?
A I am the engineering section manager for the induction unit, fan coil unit and Moduline Units that are manufactured in Tyler, Texas.
Q You are taking of air conditioning units?
A Yes.

Q How long have you been employed by Carrier?

A For seventeen years.

Q Do you have a professional degree?

A Yes, I have a Bachelor of Science Degree from Syracuse University.

Q I would like you to tell me what your area of responsibilities are and what your duties are?

A I handle all of the engineering which is involved with manufacturing, service, installation problems.

I handle all the special engineering designs of the various products. Again the Modulines, induction units, fan coil units.

490 Q How long have you done that particular type of work?

A Since 1958.

Q Are you familiar with the 37P and 37 A Moduline Units?

A Yes.

Q With respect to the 37P, you were employed by Carrier at the time that that unit was first designed and came out?

A Yes, I was involved in some of the initial development work on that.

* * * * *

497 Q (By Mr. Green) Now Mr. Fragnito, are you familiar with this job involving Staten Island Community College in New

York City?

A Yes.

Q Could you tell us when you became familiar with that job?

A As far as the date goes?

Q Yes.

A Sometime in 1970 I believe it was.

Q Did you have occasion to visit that job?

A I visited I guess it was the Essex Sheet Metal Company's shop.

498 Q You did not visit the job site?

A No, I never visited the job.

Q Now Essex Sheet Metal Company, what was that company?

A That was a company that made a plenum that was going to be mated with our Moduline Unit.

MR. GREEN: Can we have a stipulation that Essex employs Local 28 members and has a contract with Local 28?

MR. BOGEN: Yes, collective bargaining agreement and further they are members of the Employer's Association and are bound between the collective bargaining agreement between the employees and the local.

JUDGE CONSTANTINE: Is that a stipulation?

MR. GREEN: Yes.

JUDGE CONSTANTINE: Very well.

Q (By Mr. Green) You visited the Essex shop, is that correct?

A Yes, I believe it was the shop.

Q Where was that located?

A Somewhereа close to LaGuardia Airport. I was met at the airport and it was only a short ride from the airport to the shop.

Q What was the purpose of your visit to that shop?

A To take a look at a plenum that was fabricated.

Q Fabricated by whom?

A Essex.

Q When you arrived, did you have conversations with principals of Essex and did you observe anything?

A Yes, I observed their prototype plenum.

Q What did you observe?

A What I saw?

Q Yes, I would like you to tell me what you saw.

A What I saw didn't have a chance in the world of working as I reported in my report.

MR. BOGEN: I ask that that be stricken as not responsive. That is the man's opinion.

The question is what he observed.

MR. GREEN: I will not ask him to tell us what it was that he observed that caused that opinion.

JUDGE CONSTANTINE: I will allow the question.

Q (By Mr. Green) Tell us what it was that you observed that led you to that opinion?

A I saw a plenum which was made, it had two rectangular slots in the bottom portion of it and in the middle between the longitudinal slots it had an angle which was I believe welded to provide some support and this angle would have interfered with the mating with the Carrier Moduline.

Q The mating of what, sir?

A The mating of the Moduline to the plenum.

* * * * *

501 JUDGE CONSTANTINE: Let me ask a question subject to objection by all parties.

Di[illegible]u discuss this statement of yours, your statement being that it wouldn't work, did you discuss that with any official of Essex?

THE WITNESS: Yes, I did.

JUDGE CONSTANTINE: Go on from there.

Q (By Mr. Green) Tell us what the discussion was.

MR. BOGEN: Objection.

JUDGE CONSTANTINE: I don't want a lot of conversation.

I want to know what you pointed out was wrong, if anything.

THE WITNESS: I explained the reasons why it wouldn't work.

Q (By Mr. Green) Well, were you more specific?

MR. BOGEN: I object to that.

JUDGE CONSTANTINE: I won't allow him to go into details. The fact that it wouldn't work and the fact that he called it to their attention is admissible.

Q (By Mr. Green) After you visited that shop, the Essex shop, did you make any reports to your superiors?

A Yes, I did.

Q Did you have occasion to visit that shop any other time?

A No, I didn't.

Q What happened with respect to your visit?

A My involvement on that job pretty much ceased.

Q So is it true that your knowledge of the total job other than that visit would end as of that particular time?

A Yes —

MR. BOGEN: Objection, Your Honor.

JUDGE CONSTANTINE: He just wants to know if he made any other visits and he said no.

MR. BOGEN: He already asked that question. He asked another question.

I will withdraw the objection at this time.

JUDGE CONSTANTINE: All right.

Q (By Mr. Green) Your involvement ceased when?

A Shortly after I wrote my report.

Q Now, did you have any involvement with respect to the Police Headquarters Building job?

A Yes, I did.

Q Would you tell us when your involvement with that job

503 came about?

A I believe sometime in 1969.

Q Would you tell us what your involvement was with respect to that job?

A My involvement was to provide a design, special design of the Carrier Moduline.

Q Did you have occasion to visit Triangle with respect to the question?

MR. BOGEN: I object, Your Honor. I didn't mind that Mr. Green had one or two leading questions. I think we should be getting yes or no answers.

I object to that specific question as leading.

MR. GREEN: That he visited Triangle?

MR. BOGEN: Yes.

JUDGE CONSTANTINE: I don't think so. You may answer

the question.

THE WITNESS: Did I visit the Triangle Sheet Metal Company?

Q (By Mr. Green) Yes.

A No.

Q Did they visit you?

A Yes.

Q Would you tell us about when that occurred?

A I believe that was in December 1970.

Q Can you tell us in what connection that visit occurred?

504 A We had a unit mock-up installation in our Syracuse Laboratory.

Q What took place?

A The purpose was to check out the installation procedure of the unit.

Q Did you make any observations with respect to Triangle's making of the plenum or the box?

* * * * *

JUDGE CONSTANTINE: Were you able to observe it?

THE WITNESS: Pardon me?

JUDGE CONSTANTINE: Were you able to observe the plenum?

THE WITNESS: Yes.

Q (By Mr. Green) What did you observe?

A The method of attaching the inner supply connection will present some problems at the time of installation.

Q Would you tell us why?

505 A It was very difficult to insure that you would get a proper seal, air seal.

Q If there wasn't a proper seal, what consequences might that have?

A Loss of air and more importantly, noise.

Q That unit was the 37P unit?

A Yes.

Q I would like to ask you as an engineer, what differences if any there is between the 37P unit and the 37A unit in terms of making the plenum box and mating it to the control?

A Making the plenum box --

Q -- and mating it to the controls?

A The 37A design is more independent and actually depends on the box for its structural rigidity.

MR. GREEN: Would you mark this as General Counsel Exhibit 19, I believe?

(The pending document was marked as General Counsel Exhibit 19, one diagram.)

Q (By Mr. Green) I show you what is marked as General Counsel Exhibit 19 for identification and ask if you can

identify that document?

A Yes, that is a cross section view of the Moduline Unit.

Q Of which Moduline Unit?

A The 37A.

JUDGE CONSTANTINE: A?

506 THE WITNESS: A.

MR. GREEN: I am going to offer this in evidence at this time and the witness may be referring to it as he testifies as an illustration.

MR. BOGEN: Is that being offered now?

MR. GREEN: Yes.

MR. BOGEN: I would like to have a minimum voir dire.

JUDGE CONSTANTINE: Okay.

VOIR DIRE EXAMINATION

Q (By Mr. Bogen) Did you prepare this cross section?

A A draftsman did.

Q Did you prepare that?

A Literally?

Q GC 13 for identification?

A It was prepared for me at my direction.

Q Did you prepare it yourself?

A You mean did I literally draw it?

Q Yes.

A No.

Q Were you there when it was drawn?

A No.

Q Do you know what unit was used or what item was used with respect to the model, what was used as a model for this drawing?

A Yes.

507 MR. BOGEN: I object to its being introduced, Your Honor.

JUDGE CONSTANTINE: Let me ask him a question subject to objection by all parties.

Do you know if this is an accurate reproduction?

THE WITNESS: Yes, it is.

MR. BOGEN: I have no objection then.

JUDGE CONSTANTINE: I will admit, mark it received, Mr. Reporter.

(The pending diagram was marked as General Counsel Exhibit 19 in evidence.)

* * * * *

508 Q (By Mr. Green) It is a preliminary question.

Could you tell us whether or not this unit is more complicated or less complicated in its design than the model 37P unit?

MR. BOGEN: Objection, Your Honor.

JUDGE CONSTANTINE: I will allow it.

THE WITNESS: It is more complicated.

Q (By Mr. Green) Would you tell us whether or not in connection with the design, the model 37A unit would be easier or harder to have the plenum section fabricated outside of the Tyler, Texas plant?

MR. BOGEN: Objection.

JUDGE CONSTANTINE: I will allow it. It is one of the issues of the case.

MR. BOGEN: As to whether or not it is more difficult?

JUDGE CONSTANTINE: I assume that they are going to contend that it is better for them to produce the whole thing than to have some of it produced by them and some of it by someone else.

THE WITNESS: The plenum is much more difficult to be put on separately.

509 Q (By Mr. Green) On which?

A The 37A as compared to the 37P.

Q Why?

A The structural, the control part of the unit, the bellows assembly part of the unit is apart of the plenum. It has to be attached to the plenum in order to be adjusted or calibrated.

Q Go on.

A It is really this calibration or adjustment that is the whole heart of the unit.

Q Can you tell us what you mean by adjustment and calibration?

A Yes, the final performance of a unit is guaranteed by Carrier and has to meet an air quantity requirement, a plenum pressure requirement and bellows pressure requirements and these limits have to be held within plus or minus ten percent. There is a factory adjustment, this adjustment is basically adjusting these cut-offs, the cut-off blade which is this green item on the cross section view here, adjusting that slot so that you get the correct air quantity at the correct pressures.

Q In respect to the calibrations and adjustment, would you tell us whether or not that may depend upon the air temperature on a particular day when it is being done?

MR. BOGEN: I object to the question.

JUDGE CONSTANTINE: You are going into unnecessary details. I will sustain it on that ground.

510

MR. MC GUINESS: May I be heard, Your Honor?

JUDGE CONSTANTINE: Go ahead.

MR. MC GUINESS: I would not make a decision on the ground of one thing being better than another. The question

is what is the history and second, is this contract between Local 28 who is a party and the party of the contract.

I'm not a technician. I wouldn't know the difference between A and B —

MR. BOGEN: It is material.

MR. MC GUINESS: Your Honor, we don't wish to go into all of the technicalities of the unit and we don't propose to. We think a very important issue in the case is whether or not the unit could even be made in New York as demanded by Local 28 and in order to explain that issue or in order to speak to that issue it is essential to go into some of the technicalities to show that it cannot be done.

I think that is what the previous question went to and I submit that from the standpoint of Carrier the case will not be — the record will not fully show the problem unless there is at least some information with respect to some of those technical problems.

JUDGE CONSTANTINE: I will adhere to my ruling.

* * * * *

512 5 Q (By Mr. Green) You spoke about calibration, with respect to calibration are there certain types and without telling me what the machines do, what the technical details of the machine, there are certain types of machines owned by Carrier that handle calibration?

* * * * *

THE WITNESS: The answer is yes.

Q (By Mr. Green) Where are those machines located?

A In Tyler, Texas.

* * * * *

MR. GREEN: I offer to prove that they cost five thousand bucks apiece and with respect to calibration function, the employees in the Tyler, Texas plant, will you tell us whether or not they receive any special course of training?

* * * * *

THE WITNESS: Yes, they do.

* * * * *

Q (By Mr. Green) Could you tell us whether or not the Tyler, Texas plant is specifically designed and run for the purpose of having these units manufactured including the plenums and the control units?

A Yes, it is.

* * * * *

Q (By Mr. Green) Are the employees in Carrier's Tyler, Texas plant specially trained for the function of making the plenums or calibrating the plenums on the control units?

A Yes.

Q Are there supervisory and management people in Tyler, Texas at Carrier's plant and do they spend a substantial portion of their time and are they specially trained for the purposes of calibrating the model 37A and 37P units so that the units work in connection with the plenum box and the controls?

* * * * *

THE WITNESS: Yes, they do.

* * * * *

517 Q (By Mr. Green) Would you tell us whether or not the fabrication of the plenum boxes and thereafter the mating of the plenum boxes to the controls will be more difficult outside of Carrier's Tyler, Texas plant?

MR. BOGEN: Objection, Your Honor.

JUDGE CONSTANTINE: Let me add to that — by persons other than Carrier or manufacturers or whatever you want to call them other than Carrier?

THE WITNESS: It would be extremely difficult.

JUDGE CONSTANTINE: I overrule the objection. You have an exception Mr. Bogen.

* * * * *

FURTHER DIRECT EXAMINATION

Q (By Mr. McGuiness) Are you familiar with the patents on the Moduline Units?

* * * * *

Q (By Mr. McGuiness) Will you answer the question as phrased by the Judge, Mr. Fragnito?

A There are patents on the 37A and P, yes.

Q Would fabrication of the plenums on the Moduline Units here in New York in Local 28 shops require permitting such shops to use those patents?

MR. BOGEN: Objection, Your Honor. That is a legal question as to a patent attorney and this witness is not qualified to that by any stretch.

JUDGE CONSTANTINE: I will allow it.

Q (By Mr. McGuiness) Would you answer the question?

A Yes.

* * * * *

Q (By Mr. McGuiness) Let me rephrase my question then, Mr. Fragnito.

I believe you testified that certain portions of the unit are covered by patents?

A Yes.

Q How, of those portions of the units which are covered by patents, have they ever been made here in New York City by members of Local 28?

A Yes, they have.

Q Which ones?

A The making of the plenum.

Q How frequently has that occurred?

5211 A To my knowledge, on the Staten Island job —

MR. BOGEN: Please raise your voice, I am having trouble hearing you.

THE WITNESS: The Staten Island job and the Police Headquarters job and there may have been one or two other minor jobs.

Q (By Mr. McGuiness) But that is the extent?

MR. BOGEN: Objection — I am sorry.

THE WITNESS: To my knowledge, yes.

MR. BOGEN: I object to the question. It is a summary of the witness' testimony and it is repetitious, it is argumentative.

JUDGE CONSTANTINE: I will allow it. In other words, the question says the extent is Staten Island, Police Headquarters and a few minor jobs, that is what he means by extent or that is the way I interpret it.

Q (By Mr. McGuiness) Is the Moduline Unit either the 37F or 37A series made by any other manufacturer other than Carrier?

A No.

* * * * *

522 MR. MC GUINESS: Your Honor, I would like to make an offer of proof in connection with Mr. Pragnito's testimony respecting these more technical areas that you did not wish to take.

JUDGE CONSTANTINE: That was against Mr. Green, he will have to make the offer of proof.

MR. GREEN: I will make the offer of proof then.

MR. BOGEN: Well, at this time, Your Honor, just so the record is clear, I thought the normal procedure would be my opportunity to cross examine the witness.

I have no objection that Mr. Green ask for further testimony.

JUDGE CONSTANTINE: It is a belated offer of proof with respect to some questions he asked which you objected to. I sustained your objection.

He now wants to make an offer of proof.

MR. BOGEN: I have no objection to that. The last thing was -- that I was going to ask some questions and Mr.

Green interjected.

JUDGE CONSTANTINE: Let the record show that they made a request to delay your cross examination until they make an offer of proof.

523 MR. BOGEN: To which I have no objection.

JUDGE CONSTANTINE: Since you have no objection that request is granted.

MR. GREEN: If this witness were allowed to testify he would testify that the calibration necessary to have the plenum box welded to the control unit done in Tyler, Texas involves calibration stands costing about $5,000 apieace which have complicated instrumentation relating to airflow mechanisms and that it is necessary to have supervisory and engineering employees of Carrier present during this calibration process because of the special knowledge to handle unusual problems available only at the factory.

JUDGE CONSTANTINE: You have evidence of that in there? I don't think there is evidence on that.

MR. GREEN: You excluded the details.

JUDGE CONSTANTINE: I said you could ask if the plant was supervised with engineering personnel. But, go ahead, that is part of your proof, you have a right to make it.

MR. GREEN: And that with respect to these units the

37A unit, the controls and the plenum boxes are fabricated together and it is after that fabrication that the side panels are then placed onto the unit, namely these panels. (Indicating.) On Respondent's Exhibit 1 and they would be on CC 9 labeled side panels.

MR. MC GUINESS: 19 instead of 9.

524 MR. GREEN: Yes. And also diffusers are added at such time and when these particular items are added to the unit their addition changes the airflow delivery and requiring at that point or at that time recalibration of the unit to make sure that the unit will perform in a satisfactory fashion.

In other words, the installation of the side panels and diffuser panels later requires a recalibration of the plenum box welded to the bellows portion which is — the bellows portion and the other inside portions of the unit which are described in General Counsel Exhibit 19.

* * * * *

550 REDIRECT EXAMINATION

Q (By Mr. Green) Mr. Framnito, you testified in response to Mr. Bowen's questions that Triangle fabricated the boxes differently than Carrier fabricated the box, would you explain how, in what way was it different?

A The Carrier design, the plenum was part of the base unit and basically it was an integral design. Whereas, the

551 Triangle plenum used at police headquarters was basically a four sided plenum.

Q Mr. Bogen asked you on cross examination whether or not there were any complaints under the warranty with respect to the police headquarters job, were there any complaints that you are aware of?

MR. BOGEN: Objection.

JUDGE CONSTANTINE: I will allow it.

A Yes.

Q (By Mr. Green) Tell me the nature of the complaints?

A There were problems discovered during the installation where we had leaks.

Q Did you go to the job site as you testified in response to on cross-examination?

A Yes.

Q Were those the three visits that you mentioned?

A That was one of the visits, yes.

Q Tell me what the purpose of those -- there were three visits I understand that you went to the job site on April, '71, January '72 and October '73, can you tell me the purpose -- strike that -- what the purpose of these three visits were, the same or different?

A They were basically three different reasons.

Q Tell me as shortly as you can the reasons starting with April '71, tell me what the purpose of your visits to the police headquarters job in April 1971 was?

A I went down there in April '71 to check out the method of supplying the air connection to the plenum.

Q In January '72, what was the problem?

A In January '72 I visited the job site to have some discussions on a problem that had come about because of a product improvement we had made on our unit and it resulted in some interference problems.

Q What was the nature of that?

MR. BOCEN: Objection.

Q (By Mr. Green) Without being technical --

JUDGE CONSTANTINE: The fact that there were interference problems, is enough. I will not go into the details. I sustain the objection.

Q (By Mr. Green) What was the purpose of your visit in October of '72?

A To check out some leaks.

JUDGE CONSTANTINE: What?

THE WITNESS: Check out some air noise leaks.

* * * * *

MR. GREEN: To continue, the offer of proof would be if Mr. Contardi had been permitted to testify, that he would have testified that the engineering supervisory personnel at the Carrier Tyler, Texas plant, spent approximately one half hour to one hour each day fine tuning the calibration equipment used to fabricate moduline units i.e., the model 37p, and the 37a series; that performing calibrations in the field would require calibration equipment at every location with the trained and experienced personnel requiring engineering supervisory employees to operate such equipment; that a substantial and constant volume of calibration work is required to achieve and maintain the skills necessary to perform such work satisfactorily; that calibration is performed before side panels and diffusers are attached to the unit; that recalibration is some times required after final assembly, and that side panels and diffusers must be removed to perform this work; and that Carrier has unsuccessfully tried to find the defects prior to final assembly in its own plants.

If Mr. Contardi had been permitted to testify further, he would have testified that special seals and tees are used to avoid leakage problems; that leakage is investigated as part of the calibration progress; that it is not possible to maintain required dimensions, due to the fact the plennums

are not made in Carrier's factory, or in a similarly equipped manufacturing facility; that sheet metal fabrication shops in New York do not work on plennums solely required to assemble the moduline project; and that Carrier cannot properly warrant the quantity and the performance of the moduline units that are not assembled in Carrier's factories; and that new models 37ag, and 37ah moduline units created even more difficulties for fabrication outside of Carrier's factories, because of their design and concept. That completes the offer of proof.

* * * * *

MR. BOGEN: If Your Honor please, with respect to the offer of proof, the nature of the offer of proof generally, though the parties have a great liberal opportunity to present offers of proof, the statement read in as an offer of proof this morning, and portions of the offer of proof yesterday, contain legal conclusions; contain characterizations, contain areas where the witness that is for Carrier -- I just put down for example "Would not properly warrant" and "difficulties and problems" that type of thing.

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If, in fact -- and I know his Honor has already ruled to exclude that -- if, in fact, the Board at some future date and some reviewing authority should rule that that type of

matter should be relied on, I respectfully ask and would have the record reflect, I would like an opportunity to rebut that material and that proof, if it is ultimately included.

We are confronted with a situation that is worse than a Hopson's choice. At this point I can't pursue it by reason of the fact that his Honor has excluded, by definition, this material, because it is in the nature of an offer of proof. I don't want to be confronted now with having rebutting offers of proof. I simply ask that I be afforded an opportunity, if this evidence is included at any time, the opportunity to rebut it.

* * * * *

606 MR. MC GUINNESS: Your Honor, we have also worked out some stipulations on two other problems, if I may raise them at this point.

One was that it is hereby stipulated and agreed that Carrier 37p and 37a moduline units are sold throughout the United States and that such units are installed as fabricated in Carrier's Tyler, Texas, factory, including the plennum portion, by members of Locals of Sheet Metal Workers International Association without objection, except in that area within the jurisdiction of Local 28.

Examples of such installations are shown in GC Exhibit

8, with the deletions noted.

That is the end of the stipulation.

And I should point out that GC 8 was withdrawn, I believe it was marked for identification, but I believe it was withdrawn.

MR. GREEN: That is correct. So it would be now a part of the record as GC Exhibit 8.

JUDGE CONSTANTINE: Let's take one thing at a time. Does everybody agree to the stipulation?

607 MR. BOGEN: I agree.

MR. GREEN: I so stipulate.

JUDGE CONSTANTINE: How about you, Mr. Rothberg?

MR. ROTHBERG: I have no comment at this time.

JUDGE CONSTANTINE: All right then, that stipulation will be accepted.

Now my notes show, and my notes aren't final, the Court Reporter's notes are, but these notes show that GC 8 was identified, but was never offered. Now I could be wrong.

At this time do you offer it?

MR. GREEN: Yes.

JUDGE CONSTANTINE: Show it to counsel, and see if there is any objection.

MR. BOGEN: Your Honor, there is no objection, we re-

viewed this document before.

MR. ROTHBERG: I agree.

JUDGE CONSTANTINE: And I assume Mr. McGuinness does.

MR. MC GUINNESS: Yes. And I think I pointed out we have made certain deletions in this exhibit, and those deletions are installations in New York City. In other words, within the jurisdiction of Local 28.

JUDGE CONSTANTINE: Very well. So I am going to mark my notes showing that GC 8 has been received. Mark it received, Mr. Reporter.

608 (The document, heretofore marked General Counsel's Exhibit Number 8, was received in evidence.)

MR. BOGEN: It is received with the deletions as shown, with the modifications of the deletions, Your Honor.

JUDGE CONSTANTINE: In other words, there are modifications in there, except deletions as to Local 28?

MR. BOGEN: Originally, it was introduced with the entire thing, without the stipulation, and I have no objection to it being introduced now, with those crossed out.

JUDGE CONSTANTINE: As I understand it, they are being physically deleted.

MR. MC GUINNESS: Mr. Green is doing that now.

* * * * *

MR. BOGEN: If Your Honor please, so that there is no misunderstanding with respect to our position, just so there is no mistake about it, I have not changed our position that practices outside the New York area are immaterial and irrelevant to His Honor's considerations. This stipulation, in effect, deals with testimony, proposed testimony of several witnesses as to what takes place outside of New York City, which His Honor has excluded, based on my objection. I am not saying that my objection is now withdrawn, or that I have changed my position. I am, at this point, stipulating only for the purpose of indicating that that is factually the case.

609 Now I am reserving my right to object to one: the materiality of it, two: the relevancy of this situation, and three: again, this anticipates, consistent with His Honor's ruling, a defense that has not been introduced as yet by the Respondent; that is, of historical, traditional work etc.

I don't by any means or in any manner wish to waive this objection. However, since we have come to the end of the case, I have no objection in terms of there physically being part of the record. It is a mechanical problem as far as I am concerned, but I don't want the record to reflect, or His Honor to either be remiss or misunderstand my position, one: that the practices outside the New York area are totally im-

material and irrelevant to anything before His Honor. And two: that the offer, at this time, of these factors anticipates a defense, a defense that might be included for that reason. But I don't want any attempt to accommodate counsel, in terms of expediting the presentation to misunderstand me. I have no objection to this physically being presented at this time.

JUDGE CONSTANTINE: Let me see if I understand you; you are saying that in order to prevent a new trial in case I turn out to be wrong, you agree that these are the facts, but you object to my consideration of them.

MR. BOGEN: Exactly, for the reasons I have stated.

JUDGE CONSTANTINE: That is understood, yes.

610 MR. GREEN: Yes.

JUDGE CONSTANTINE: So if it turns out I am wrong, the Board won't have to send it back, because you have agreed that the facts are so, and in case I am wrong you are including them.

You want the record to be included; it is more than an offer of proof, it is a fact to which the parties agree.

MR. BOGEN: Exactly.

* * * * *

MR. MC GUINNESS: We were less than successful in resolving another conflict, but at least we made some progress on it, and that has to do with the position which I raised the first day of the hearing about a cessation of the installation of the unit at Babies Hospital, in which I said that I reserved the right to ask that the record remain open for further proceedings, because this just having occurred, we have not had a chance to investigate and didn't anticipate we could during the course of the hearing.

JUDGE CONSTANTINE: I recall that, yes sir.

MR. MC GUINNESS: Now we have agreed upon a stipulation that covers all but one portion of this situation, and I would first like to read that stipulation into the record.

JUDGE CONSTANTINE: All right, Mr. McGuinness.

MR. MC GUINNESS: It is hereby stipulated and agreed that, on or about March 3, 1975, members of Local 28, employed by General Sheet Metal, Incorporated, began installation of Carrier 37af moduline units at Babies Hospital Addition, pursuant to an agreement between General Sheet Metal, Inc., and H. Cohan Contracting Corp.

The agreement is in the record as GC 2, appendix (y).

And continuing the stipulation: that on or about March 7, 1975, a meeting was held of the Joint Adjustment Board,

established pursuant to the collective bargaining agreement between Local 28 and the Sheet Metal and Air Conditioning National Association New York City Chapter -- this agreement is in the record as GC 2, appendix (e) -- that at this Joint Board meeting, representatives of General Sheet Metal, Inc. were present; that at said meeting, charges brought against General Sheet Metal, Inc., on or about November 7, 1974 -- which are in the record as GC 2, appendix (aa) -- were discussed. And representatives of Local 28 proposed adoption of the resolution set out in GC 2, appendix (bb); and that no final action was taken on said proposed resolution or on any other disposition of the charges against General Sheet Metal, Inc. at this meeting.

That completes the stipulation.

JUDGE CONSTANTINE: I assume Mr. Green concurs to it; is that correct, Mr. Green?

MR. GREEN: That is correct.

JUDGE CONSTANTINE: How about Mr. Rothberg?

612 MR. ROTHBERG: That is not factually correct.

MR. GREEN: We left open certain factual matters that occurred subsequent to that meeting.

MR. ROTHBERG: It doesn't give a full picture of the kind of differences, it gives a partial picture of what occur-

red on that date, not an actual picture.

MR. GREEN: Well, we weren't at this meeting.

JUDGE CONSTANTINE: Do you want to take time out while you discuss it with Mr. Rothberg? Because I can't accept a stipulation unless the parties agree.

Let's take a short recess, gentlemen.

(A short recess was taken.)

JUDGE CONSTANTINE: On the record.

During an off-the-record discussion, you talked about this with the other lawyers, Mr. Rothberg. Do you have a statement to make?

MR. ROTHBERG: I am prepared to stipulate that the stipulation put forth by Mr. McGuinness is accepted.

JUDGE CONSTANTINE: All right, then, I will accept the stipulation since all the parties agreed to it.

* * * * *

618 MR. BOGEN: At this time, my motion is dismissal of the Complaint in its entirety.

* * * * *

619 MR. BOGEN: I suggest that who the primary and who the secondary was becomes critical; in this case the primary was Carrier, and there is no question about it.

And if, in fact, His Honor finds there was a conversation

that bordered on restraint by Mr. Pasquinucci, or anything improper in the (ii), it was directed to the proper party, the primary one here.

Under normal circumstances you don't have a situation where it is directed at the neutral, the secondary. There is no proof that there was any direction at any secondary at all. The entire testimony, the entire case, the history that Mr. Contardi went into showed that the Carrier from square one, from the site, the unit was available from then on to the present date.

And Your Honor indicated we are here for some reason, and that reason is Carrier. There are no problems with any other employer, no contact, communication; the record is absolutely barren.

As a matter of fact, I dispute, if the word dispute is acceptable, and if Your Honor should find the (ii) was directed at Carrier, there was no direction, nothing with anybody else. There was one shoe dropped here, if Your Honor pleases.

The Carrier is the primary, and in a normal setting the primary is there, and a secondary. If you should find conduct in the (ii) situation, it was directed against the primary, not any secondary, or any neutral whatsoever.

There is no question that Carrier is the one who controlled

where the plennum was made, and if we, 28 took any action, and, Your Honor, we certainly did not. We had a running dispute with Carrier from time one to the present date, but the action was directed against the primary, and certainly were not directed against the secondary or neutral in this particular case.

* * * * *

629 MR. BOGEN: I am arguing in terms of the possibilities here. We would urge you that there is no (i) and (ii) conduct whatsoever; the record is barren of it. But if you should find that there was (ii) conduct, in terms of you concluding that there was a threat that was directed against Carrier in their dispute, again, Carrier isn't the secondary, they are a primary.

630 With respect to the situation insofar as general is concerned, we have an unrelated dispute under our collective bargaining agreement, unrelated to our dispute with Carrier, or parallel with our dispute with Carrier, and we took whatever rights we had under the collective bargaining agreement in the work preservation clause. And we will get to that in a minute.

We filed a Complaint to the Joint Adjustment Board under

our agreement, and we sought an adjustment to enforce our rights under the agreement; they are parallel.

JUDGE CONSTANTINE: But your agreement reads the agreement is to see that Carrier --

MR. BOGEN: No, it is not, if Your Honor pleases. If you look --

JUDGE CONSTANTINE: It says everything in the Carrier dual moduline.

MR. BOGEN: If Your Honor will look at (aa) in the second paragraph, it violates the clause, because it covered losses of employees, to which reasonable compensation is a basis as a loss, based upon -- in fact, it was here in this particular case -- the point was that we filed a grievance, and under our agreement cited reasonable compensation. The solution, if Your Honor looks at (bb), the page right next to (aa) --

JUDGE CONSTANTINE: Yes, I am looking at it.

MR. BOGEN: The relief sought was compensation, reasonable compensation, a very modest compensation, as a matter of fact.

JUDGE CONSTANTINE: But they wanted the compensation from General Sheet Metal work, not from Carrier, so that they were the primary employer.

MR. BOGEN: Not the primary employer with respect to our

dispute with Carrier, Carrier was the employer for the collective bargaining agreement with 28, and it can do as it sees fit. We have submitted a grievance to the extent of a violation of our agreement.

* * * * *

635 We have been in a primary dispute with Carrier, and we have argued with Carrier from 1963 when this was introduced. And then -- excuse me, Your Honor, I think Mr. Contardi testified it was first introduced in New York in '63. But from the very beginning, and to the present, the argument was always between Carrier and 28, the primary dispute.

* * * * *

636 The Carrier has full control, and they are the primary with respect to that item at this point; there is no question about it.

* * * * *

That is what I am saying, this is a primary dispute with Carrier, and what they can do.

I would submit we could have obstructed Carrier, we could have picketed Carrier, and we could have taken any legal activities against Carrier, and this is what the record indicates, 637 there was this open dispute.

Holding that apart and going back to the situation where

we have an employer; in our case we are not telling the employer don't do it, you can't do it, you can't touch it at all, we had a work preservation clause. In Kimstock and in the related cases the Board said "A union can file charges for reasonable damages." And that is what we did. That is not (i) or (ii) conduct; that the employer under our instructions is not considered novel insofar as this is concerned.

JUDGE CONSTANTINE: So that would make Carrier secondary wouldn't it?

MR. BOGEN: It would not, Your Honor, in terms of this dispute, if you will. As I said, there are two parallel disputes. There is one primary with Carrier. We urge that is a primary, and we do as we see fit.

* * * * *

638 MR. BOGEN: I am going to get into that.

I want to convey the theoretical position. There is a dispute with Carrier, there is no question that there is a dispute with Carrier, and it is the fabrication of this item.

JUDGE CONSTANTINE: Yes, but the question is is it primary or secondary, it is admitted there was a dispute.

MR. BOGEN: Now we say that it is a primary dispute. As to where and how it is going, we submit to you it is direct and the primary, to the extent that Carrier has full control

* * * * *

643 If you should find language in terms of the (i), and the conversation between Pasquinucci and Carrier and what was said here, that represented a primary dispute between Carrier and 28. How it was resolved and what happens really has nothing to do with the accounts or the Complaint that has been going on, that is a primary dispute.

As a matter of fact, 28 was entitled to do whatever it wanted to do, it was a dispute, and I urge Your Honor, it was a primary dispute.

* * * * *

644 MR. GREEN: I will go first.

I think perhaps what is most interesting at this point, is that he is claiming that he has a primary dispute with Carrier, and assuming for the moment that there is a primary dispute between Local 28 and Carrier, one would ordinarily assume under traditional principles of Board law, and secondly, that therefore other employers are secondary employers. And we contend that Three Boro and General are, indeed, secondary employers. And in terms of the action, we will contend there was a violation of 8(b)4, and the order reaffirmation of the contract with these employers, which were restrained from doing business with both these employers, would be a reaffirmation of the legal contract; the contract which by definition

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of the act is null and void.

JUDGE CONSTANTINE: Does the Complaint allege that they are secondary employers? I don't have it.

MR. BOGEN: It does not.

JUDGE CONSTANTINE: I don't mean the allegations, but what does it say? Does it object to have A do business with B? Because I want to know how it is worded.

MR. GREEN: The Complaint alleges among other things that the agreement --

JUDGE CONSTANTINE: I want to know what your Complaint says with respect to the 8(b)4 part, because if you don't allege or don't reasonably indicate that these others like Three Boro and so forth are secondary, then you can't argue now they are secondary. We have got to go by the Complaint.

MR. GREEN: The Complaint by its nature doesn't say secondary in those words.

JUDGE CONSTANTINE: Sir, as I recall reading the Complaint, I thought you were indicating that Carrier was a secondary employer, and these others were primary. Maybe I'm wrong.

MR. BOGEN: I think you are wrong.

MR. GREEN: Paragraphs 25 and 26 are counsel's conclusionary paragraphs.

JUDGE CONSTANTINE: Let me look at it, there is no point reading it into the record.

646 1 MR. GREEN: So General Counsel has been arguing and has
2 been disclosing to Mr. Bogen, again, since the time this case
3 was first filed, and our opinion, Three Boro, and when the
4 later events occurred with respect to General, that General
5 were neutral parties in the dispute, and they were secondary.
6 JUDGE CONSTANTINE: Who is the primary? You have to have
7 a primary under 8(b)4. It is time for me to find out what
8 your position is. Who is the primary according to you?
9 MR. GREEN: Well, the primary could conceivably be Car-
10 rier.
11 JUDGE CONSTANTINE: Well, is it or isn't it? Who is it?
12 You have got to take a position.
13 MR. GREEN: I will take the position that Carrier is the
14 primary.
15 Now in terms of the 8(b)4, the evidence as shown thus
16 far, with respect to the Van Etten job site Three Boro was the
17 sub-contractor performing various sheet metal work, at that
18 time, and that it employer a number of people including a
19 sketcher by the name of Ted Johansmeyer. That was introduced
20 into evidence --
21 JUDGE CONSTANTINE: He testified.
22 MR. GREEN: There was evidence that prior to the start
23 of that job, there was a union related resolution back in June

of the same year, and you have that resolution before you.

There was also evidence from Mr. Contardi, that Mr. Contardi had spoken to Mr. Dan Pasquinucci, and Dan Pasquinucci, the President of Local 28 said, "The sketcher is not going to do the work of sketching that."

In other words, that was work that he was supposed to perform for his employer. And 8(b)4(i) indicates that restraint and coercion would result from a situation where an employee, at the direction of the union, or is condoned by union for that matter, engages in a work stoppage.

JUDGE CONSTANTINE: Under (i), you can go directly to the secondary employer.

MR. GREEN: Again, what I am suggesting to you is that this man did refuse to perform services for which he was employed by his employer; that would constitute in any normal situation, a refusal to perform services; a work stoppage, if you will. This was clearly adopted by Mr. Pasquinucci, who told Mr. Contardi right after the fact, "Yes, this man is not going to do the work." That is typical (i), and 8(b)4, in the sense of the wording of them. And I suggest that the inference to be drawn is that Three Boro wanted to do this work, and they were not concerned about the moduline as manufactured by Carrier. Now that is clearly, in my judgment,

conduct contemplated by section 8(b)4, (ii), and I think one can't be too concerned in regard to a secondary boycott, since there are many, many cases where one has to go and prove matters by substantial evidence, primarily because the employees who are involved and who might be ordinarily giving testimony, are members of and controlled to a large degree by the Respondent.

So it is a typical kind of evidential situation that comes up in many, many cases. And so therefore, in all these cases or in many of these cases, proven by substantial evidence. And it is a normal way of proving a case; and substantial evidence is as much good evidence as unrebutted evidence, is, if believed, as a direct statement by Mr. Ted Johansmeyer that Mr. Pasquinucci called him on a specific day and said don't do the work; it is as simple as that.

Now with respect to the 8(e), and I think we have to get into the 8(e) question --

JUDGE CONSTANTINE: I didn't say you didn't. I just said leave 8(e) out while you were discussing the 8(b)4 part.

MR. GREEN: Well, the 8(e) and the 8(b)4 are really two sides of the same coin, or are really the same coin. 8(e) is merely an agreement to cease doing business, and 8(b)4 is activity by a union to pressure somebody to cease doing business,

so one takes place in the present or past time, and the other is to cease doing business at a future time; and that is what this last statute was designed to remedy.

Now the union has an agreement with Three Boro, and the agreement is before you. The union has an agreement with sheet metal contractors association, which is binding on General, and of course, that agreement is with you. That agreement is, or that portion of the agreement upon which the union is relying, is a no sub-contracting provision; it says in substance, "You shall not sub-contract work out, work which is historically and traditionally performed by our employees."

Now there really are, I think, three points that can be made along the way.

Number one: These companies, General and Three Boro never sub-contracted out anything, they never did that.

Number two: It is quite clear to me that both of these companies never had the work, or were never assigned the work to do the fabrication, the plennums in their shops. This is clear, I think, from the specifications that were approved by an architect, and the owners. I think it is not perhaps as crystal clear from the contract between Acme and Three Boro, but I think that contract is somewhat ambiguous, and Mr. Roseaze has clarified the intention of that contract, by

testifying very clearly that he had given work or made a contract with Three Boro to perform certain work as per the specifications, i.e., used the 37a moduline unit.

Maybe or maybe not, Three Boro had a different concept of what was being given, but I think not.

Insofar as Mr. Bogen's reference to the last letter, we could really say that one should look at the first paragraph, and that is "We can disregard your October 6 letter, because the problems between Local 28 and Carrier have been resolved and settled."

Now I would suggest to you that clearly it was the intent of all the parties at the Van Etten job center, with maybe the exception of Three Boro, but I doubt it, that there was to be purchased the Carrier moduline units as an entire unit; that they were to be purchased by Acme from Carrier; that the work of installation was to be performed by Local 28 members employed by Three Boros, and that Three Boro was to have absolutely nothing, absolutely nothing whatsoever to do with the fabrication of the plennum on that unit. I think that is clear. I think that was related very clearly with respect to the other contracts or the other arrangements regarding the Babies Hospital job, which occurred subsequent to the filing of the charges, but which have been in effect in-

cluded in the amended Complaint.

Now if the contracting parties were Local 28 i.e., Three Boro and General have no control over the assignment of manufacturing the metal boxes for the plennums; then under the Cotch case, the Board's decision in the Cotch case, and the Court of Appeals Third Circuit opinion in the Cotch case, then Three Boro and General must be deemed to be secondary employers who should be insulated from pressure of -- well, pressure by Local 28.

Now, again, this brings us back to the earlier question; what is pressure? Well, obviously a work stoppage is pressure, and I think we have proved that indeed this occurred with respect to the Van Etten job.

Now there is a third aspect in relation to the A.D. question. Assuming, and I will only assume this for argument's sake, because I don't think it has been shown, but assuming for argument's sake that either General or Three Boro, in fact, had some aspect of control over the contract assignment, the next question under the Supreme Court decision in National Woodwork, is whether or not the enforcement of these type of provisions is reasonably designed to protect the work of unit employees of these companies.

Now we have put into evidence, and that would be a rele-

vant question to be considered, as to whether or not enforcement of the agreement to not sub-contract is either null and void or a viable agreement. We have put into evidence a variety of pieces of testimony into evidence regarding work preservation, that is it. Whether or not it is in the appropriate time or not is in the record, and I think perhaps one should consider what I think is the really critical piece of evidence on that question alone. And that is, the report and study compiled by what I think is the elite members of Local 28; members of Local 28, who by virtue of their experience, their expertise in the industry, were called upon by the union to make a study of these units, and to evaluate them, and to

652 evaluate their impact on work performed by Local 28 members. And what did they conclude? The committee report really speaks for itself. They concluded that the installation of these units, the 37a and 37p units as manufactured in their entirety by Carrier, true, they would lose some work in shops, in contractor shops, Local 28 shops, but that the work lost would be more than made up by additional work that would result from using these units in New York City.

Now again, I want to stress that these people who made these reports are, and I think it has been established, the elite of this union in terms of their expertise. These are

the men who know what they are talking about; these are the men who were on the research and review committee.

Mr. Connelly was a man who Mr. Farrell referred people to when he wanted a technical question answered. Mr. Connelly was the man who testified in New York State proceedings when there were possible changes on building codes.

Mr. Bretz is an author of a book dealing with the functions of heating metal, and what drawings are all about.

Mr. Connelly teaches sheet metal work to members of Local 28 so that they may become better workers in their industry. Mr. Berman also teaches; Mr. Bretz teaches. These are the people who know what their industry is, they know what this industry is all about.

Now with respect to the 8(e), there is another side of

653 the 8(e) question.

Now under 8(e), and the statute makes this fairly clear, an agreement which is deemed to be one which is encompassed by section 8(e), is null and void. It is null and void in its entirety.

True, there is a question in terms of the statute of limitations as to under what circumstances can you attack such an agreement, and therefore 10(b) comes into play at a certain point. But the critical point of evidence that is

necessary to show the existence and enforcement of an 8(e) agreement, is that the parties to the agreement, either party to the agreement is enforcing it.

How does one enforce an 8(e) agreement? One can call out the troops, get them on the streets, have them cease their work and cease performing their services, that is one case of enforcing an 8(e) agreement, there is no question about it. There is another way, of course, which is one where you sign an agreement to engage compliance, and there is no question since the National Maritime Union case Vantage Steamship, that that action to sue to enforce an agreement which is an employment of an 8(e) is constitutional reaffirmation of that agreement. And therefore brings into play, the question as to whether or not the agreement is a violation of law.

So you have the agreement. Is there a violation of law? Reaffirmation which is occasioned by a union or a company, that allows the question to be answered. Whether or not, at this point in time, the parties to the agreement are maintaining it, enforcing it, and therefore the Board can consider whether or not the agreement itself is a violation of law.

And I would submit to you that it is certainly a normal aspect of law, that where there is evidence to show that the

parties, in this case Local 28, and indeed Three Boro, also have reaffirmed that agreement, that agreement becomes law as a live issue, as an issue to be placed before the Board, and a live issue to determine whether the Board can consider an agreement to be declared null and void at that particular point in time. And I would submit now, that these events having occurred, we can now look at the agreement we have now, and determine whether or not it is a violation of 8(e) or not a violation of 8(e), and now becomes a statute decision issue.

And I submit that on the basis of the right of control, on the basis of really what I consider to be no work preservation at all, the union is not preserving work in any objective sense; this agreement must fail, because it is clearly an agreement which prohibits these companies from doing business with other persons, and therefore, within the literal language of section 8(e), is not subject to defense.

JUDGE CONSTANTINE: Will you comment, please, on this proviso that says "nothing in the sub-section shall apply to an agreement between the labor organization and the employers in the construction industry".

MR. GREEN: That is a proviso related to the construction industry.

JUDGE CONSTANTINE: I assume we are dealing with a con-

struction industry.

MR. GREEN: That provision is to the hot cargo section related to on-site work.

JUDGE CONSTANTINE: Isn't it on-site work?

MR. GREEN: Absolutely not. These plennums as specified by the employer, the work on these weren't to be made in Tyler, Texas, and they weren't to be made on Staten Island, indeed, the union's position with respect to the manufacture of these plennums, was that they had to be made in the site shop, not at the site. That has nothing to do with 8(e).

JUDGE CONSTANTINE: Go ahead.

MR. GREEN: I have nothing further to say.

JUDGE CONSTANTINE: Mr. McGuinness, will you proceed with your argument.

MR. MC GUINNESS: After these very extensive arguments, and we are arguing on a motion to dismiss, I will waive any argument at this point.

MR. BOGEN: If Your Honor pleases, may I make a brief statement?

JUDGE CONSTANTINE: Before you proceed further, on this question of the primary and the secondary, I have to accept your statement, and I will pass on this motion on the grounds that Carrier is the primary.

Do you contend they are primary or not?

MR. MC GUINNESS: I would differ with Mr. Green on that position, Your Honor, on the basis that Three Boro in general, and the other contracts here are secondary with regard to Local 28's dispute with Carrier, but we don't consider Carrier as that, and so that therefore, Carrier is the primary employer, because there wasn't any -- there is no bargaining relationship between Carrier and Local 28. And under the Cotch case, and I think the A.L.J. Administrative Law Judge decision some similar distinctions have been drawn, that in order for there to be a primary relationship, there needs to be a contractual relationship between the parties. I don't think that question needs to be raised, because I think these cases as law are beginning to develop that there doesn't have to be a distinction, there doesn't have to be a designated primary in the case.

JUDGE CONSTANTINE: No, but there has to be a secondary employer in order to find out who the primary is.

MR. GREEN: That is why when you asked me I hedged with my statement to you, you put me against the wall.

JUDGE CONSTANTINE: I think you don't necessarily have to reach the question of who is the primary, you obviously have to reach the question of who the secondaries are.

657 Very briefly you can reply, Mr. Bogen, and then we'll take

a recess, we have been working the Court Reporter pretty hard.

MR. BOGEN: I just want to address myself briefly to a few things. Mr. Green's argument is one, with respect to the clause in the agreement, page 40 of the collective bargaining agreement. That is the yellow booklet, Your Honor, in appendix (e).

JUDGE CONSTANTINE: All right, page 40, I have it.

MR. BOGEN: Page 40 actually has two provisions, the non sub-contracting provision is the top portion, and the second portion having to do with the last paragraph is the work preservation clause.

Mr. Green in fashion simply said this is not a no-sub-contract clause, and this clause has no application.

As a matter of fact, the last clause was added, if you see the agreement, that is appendix (d), in the blue booklet in front of it.

JUDGE CONSTANTINE: What page is that?

MR. BOGEN: The blue book, and it is on page 40. You will see that the paragraph that appears in appendix (e), the last paragraph, does not appear in the prior contract, and it is an additional clause; and that is the work preservation.

* * * * *

MR. MC GUINNESS: May I just make one comment, because

Mr. Bogen referred to both the Kimstock and the California A.G.E. cases two or three times about the state of the law.

We have been involved in appeals in both of those cases, the California A.G.E. was argued in the Ninth Circuit, the first week of January, on a petition for review filed by the California A.G.E., and the cross petition filed by the union. And no decision has yet been handed down.

In the Kimstock case, that was formulized with the Charging Party, Kimstock, filing for a petition for review in the Ninth Circuit, and the union filing a petition for review in the Court of Appeals for the District of Columbia. Upon a motion to transfer filed by Kimstock being granted so that the case would then be heard in its entirety in the Ninth Circuit, the union offered to settle the case. A settlement was worked out, and the petition for review was then withdrawn.

* * * * *

665 DAN PASQUINUCCI

was called as a witness by and on behalf of the Respondet and, having been first duly sworn, was examined and testified as follows:

JUDGE CONSTANTINE: Give your name and address to the Reporter, please.

THE WITNESS: Dan Pasquinucci, 15 Maiara Street, Purling,

New York.

DIRECT EXAMINATION

666 1 Q (By Mr. Bogen) Mr. Pasquinucci, what is your present occupation or profession?

A I'm at the present time a sheet metal worker international organizer.

Q By whom are you employed?

A I'm employed by the Sheet Metal Workers International Association.

Q How long have you been so employed?

A Three months.

Q Prior to your employment that you just described, what was your occupation or profession?

A I was Business Agent for six and a half years in Local Union 28, and thereafter two and a half years as President and Business Agent.

Q What was the precise date of your position as the President of Local 28?

A I was President of Local 28 from April of 1972 until June 30 of 1974.

Q Did there come a time in September of 1972, when you had a discussion with Mr. Larry Sturgis regarding the Carrier moduline units?

A Yes.

Q Who is Mr. Sturgis?

A Mr. Sturgis at the time was the industry fund co-ordinator and executive director, I believe.

667 Q Where was this discussion had, sir?

A In my office.

Q Who was present?

A Larry Sturgis was alone.

Q Did you have anybody there, or were you alone also?

A I was alone.

Q Will you tell us in substance what Mr. Sturgis said to you, and what you said to Mr. Sturgis?

A Mr. Sturgis was very interested in promoting the moduline unit in the City of New York.

JUDGE CONSTANTINE: Did he say that, Mr. Pasquinucci?

THE WITNESS: Yes, sir.

JUDGE CONSTANTINE: If you can just confine yourself to what was said, just a summary of what was said.

THE WITNESS: He said he was very interested in promoting the moduline unit in New York City, as he felt it meant an additional amount of work for the membership of Local 28.

Q (By Mr. Bogen) Did he say anything about the moduline units?

A Yes, he said --well, I was interested, because I had a serious unemployment situation at the time.

JUDGE CONSTANTINE: Did you tell him that? I just want the conversation, I am not interested in what goes on in your mind. Just tell us what each person said.

Q (By Mr. Bogen) What did you say to him, sir?

668 A I said I would be interested in the moduline unit if the method of bringing it in meant more work to the men of the shop of Local 28. But it meant a modification of our collective bargaining agreement.

Q What modification did he mean in your mind, or will you tell them what the modification was?

A We had members of Local Union 28 fabricating a similar box.

Q What box are you talking about, sir?

A The moduline unit.

Q When you refer to the box, you say members of Local 28 were fabricating that box?

A Right.

* * * * *

Q (By Mr. Bogen) How long had members of Local 28 been fabricating a similar box?

A As long as I can remember.

Q How long is that, sir?

669 A Fifteen years.

Q In addition to your activities in the Local, you have indicated you were the Business Agent and Manager for approximately nine years, six and a half and two and a half; were you a member of Local 28 before that?

A Yes.

Q How long have you been a member of Local 28?

A A total of 30 years.

Q During the period of your 30 years, have you seen boxes similar boxes to the plennum or the box that was fabricated by 28 members?

A Yes.

Q Can you give us the number of how many times you have seen this, or how many boxes were made, to your knowledge.

A Many boxes, thousands upon thousands I guess.

Q What else, if, anything, did you say to Mr. Sturgis during this meeting with him in September of 1973?

A Well, I was very interested in the box if it meant additional work for the Local 28 members. And I would submit it to the Research and Review Committee for further consideration.

Q What, if anything, did you say concerning the collective

bargaining agreement and the fabrication of the box?
A That was understood, I just said that it was in violation of our agreement, and I would have to go to our executive board, before the executive board, to get approval of the moduline unit.
Q Was that the extent of the conversation?
A That was it.
Q What, if anything, did you do as a consequence of the conversation?
A I submitted it to the Research and Review Committee.
Q Had you appointed that Committee?
A No.
Q Do you know who appointed that Committee?
A The previous Business Agent, Mr. Farrell.
Q Approximately when did you submit this? What was the purpose of submitting it to the Committee?
A Well, to try to evaluate the report I had gotten from Larry Sturgis, and I wanted them to look into the fact that it showed a potential to bring more work into the membership of Local 20, to make up for the loss of the boxes, if that was the case, I was willing to consider it.
Q did there come a time when the Committee furnished you with an oral report or a written report?

A Yes.

Q Did you receive a written report?

A Yes, I did.

Q I show you, Mr. Pasquinucci, exhibit GC 2, appendix (i), and ask you to take a look at those pages for a moment (handing).

671 MR. MC GUINNESS: May we go off the record for a moment?

JUDGE CONSTANTINE: Off the record.

(Discussion off the record.)

JUDGE CONSTANTINE: On the record.

Q (By Mr. Bogen) Mr. Pasquinucci, before we went off the record, I asked you to read or view GC 2, appendix (i); did you have an opportunity to look at it?

A Yes.

Q Is that the written report that was submitted to you by the Research and Review Committee?

A Yes.

Q What did you do with the report, if anything?

A I read the report and I agreed; it was a recommendation from the Committee to accept the moduline unit, and I went along with the recommendation of the Committee, and we presented it to the executive board.

Q You say the recommendation; what did the recommendation

have to do with in terms of additional work.

MR. GREEN: I object, it speaks for itself.

JUDGE CONSTANTINE: I will sustain the objection.

Q You say you submitted it to the executive board?

A Yes.

Q Did you present your position to the executive board with regard to the recommendation?

A Yes.

672 Q What approximately did you present?

A I said to the executive board that I was going along with the recommendation of the Committee on the potential that it would bring extra work into Local union 28.

Q Was any question raised with respect to the loss of the fabrication of the plennums?

A Absolutely, I mentioned that too. I said I knew it was in violation of our agreement, but I had to go along with the recommendation of the Committee to try and promote it.

Q Was anything said at that meeting with respect to the fabrication of the plennum, who was going to fabricate the plennum?

A Yes.

Q What was said, sir?

A The plennum would be fabricated by Carrier, and the

members of Local 28 would have nothing to do with the fabrication of the plennum.

Q What was the position taken by the executive board at that meeting?

A Well, the executive board didn't go along with the recommendation, due to the fact that they felt that they had the fabrication of the box, and the additional work was only a potential, and they felt it was in violation of our agreement anyway, and they weren't ready to change it.

Q Was there more than one meeting, was there more than one

673 executive board meeting with respect to the consideration of the recommendation? Was there more than one meeting?

A Yes.

Q I show you what is GC Exhibit 3 in evidence, Exhibit 4 in evidence, and Exhibit 5 in evidence, and I ask you if you recognize those exhibits (handing)?

A Yes.

Q Do those exhibits accurately set forth the motions and the resolutions passed at the executive board meeting concerning the moduline unit?

A Yes.

Q After the meeting of December 6, which is reflected in the minutes of GC 5, did you relate to Mr. Sturgis the re-

sults of actions taken by the executive board?

A Yes.

Q What, if anything, did Mr. Sturgis say or do with regard to that?

A He said -- he asked me whether it would be possible that he could appear before the executive board, and perhaps he could better explain the situation to the executive board.

Q Did there come a time thereafter when Mr. Sturgis appeared before the executive board?

A Yes.

Q Can you tell us when, or approximately when he appeared, sir?

674 A Oh, February.

Q Of what year?

A '73.

Q Were you present at the time?

A Yes.

Q What was the position stated or taken by Mr. Sturgis at that meeting?

A Well, Mr. Sturgis was trying to get the executive board to push aside their agreement, and go along with this moduline unit, again; to make the additional attempt to go along with it.

Q Was the question of additional work discussed and pointed out at that time?

A Yes.

* * * * *

Q Did the executive board ask Mr. Sturgis questions?

A Yes.

Q What were the questions and answers?

A Well, he was asked the same questions and answers they had asked at the previous Committee meeting, what advantage it would be to us, and all that sort of thing. And they finally came to the conclusion that Mr. Sturgis was asking them to change their agreement, and it was out of their hands. And they suggested that they would go before the Joint Adjustment Board.

Q That who would go before the Board?

A That Mr. Sturgis go before the Joint Adjustment Board, and give them the situation of the moduline unit, because it was out of their hands to modify the agreement.

Q Did there come a time when the matter was presented to the Joint Adjustment Board?

A Yes.

Q Who presented that before the Joint Adjustment Board?

A Mr. Sturgis.

Q What presentation did he make before the Joint Adjustment Board?

* * * * *

Q (By Mr. Bogen) I will repeat the question.

The question was what position did Mr. Sturgis take before the J.A.B.?

A Mr. Sturgis strenuously tried to have the Joint Adjustment Board modify the agreement, and stuff, on the moduline units, * * *

* * * * *

My next question to you now is, after Mr. Sturgis stated his position before the J.A.B., what position, if any, did Local 28 state in response to that?

A Local 28 stated that they would take that position back to their executive board.

Q What was Local 28 going to take back for consideration of the executive board?

A The proposal that Larry Sturgis had given them.

Q What was the proposal, specifically?

A The proposal was to attempt a pilot project in New York with the moduline unit.

Q Did there come a time when that proposal, or that matter,

was submitted to your executive board?

A Yes.

Q Approximately when was that submitted to the executive board?

A Some time around April, or thereabouts.

Q Were you present when this matter was discussed and reviewed by the executive board?

A Yes.

Q What was the position taken by the executive board with respect to the proposal?

A They wouldn't go along with it.

* * * * *

679 Q Will you state what the executive board's position was with respect to this proposal?

A The executive board would not go along with it, as it meant modification of their agreement, and they weren't ready to attempt the installation of this moduline unit in hopes that the potential would give them more work.

Q With respect to the work, what was stated, if anything, with regard to the plennum box?

A It was in their opinion that the fabrication of the work was work that they had, and they weren't ready to modify their agreement with a potential that there would be more work com-

ing in after.

Q I show you GC Exhibit 6, and ask you to read that for a moment (handing).

JUDGE CONSTANTINE: While he is reading it, let me ask you this question, Mr. Bogen: My notes indicate that there are two pages to this exhibit, and the minutes of 6/5/73. Are those notes accurate?

MR. BOGEN: Yes, Your Honor. I think that by way of a stipulation, the meeting carried on from May 30 to June 6, and it was the same meeting. There are two dates to it, but we had the same difficulty as we had in terms of the legibility of it.

JUDGE CONSTANTINE: It is one meeting that ran from one

680 period to another?

MR. BOGEN: I think that is the case, that was our stipulation.

JUDGE CONSTANTINE: Thank you.

Q (By Mr. Bogen) Mr. Pasquinucci, have you read GC 6?

A Yes.

Q Does that accurately and completely set forth the resolutions that were adopted at the meeting on May 30 through June 6 of the executive board, in regard to the moduline unit?

A Yes.

Q After it, did you communicate the results of the June 6 meeting of the executive board to Mr. Sturgis?

A Yes.

Q After that, did there come a time in October of 1973 that you received a telephone call from Mr. Gus Contardi?

A Yes.

Q Approximately when in October did you receive such a telephone call?

A I don't know the exact date.

Q Was that the only telephone call received from Mr. Contardi in October?

A No; I received several calls from Mr. Contardi.

Q Will you tell us the substance of that conversation in October, what he said to you and what you said to him?

A I can't recall.

681 Q In October of '73, you can't recall that?

A No.

Q Did there come a time that you received a phonce call from Mr. Contardi regarding a Van Etten job?

A Yes.

Q Do you recall approximately when you received that call?

A Some time in October.

Q Did you call Mr. Contardi, or did he call you?

A Mr. Contardi called me.

Q Will you tell us, as best you recall, what Mr. Contardi said to you in that conversation, and what you said to him.

A Mr. Contardi notified me that the sketcher or the draftsman at the Van Etten job had refused to sketch the job.

* * * * *

685 Q Did there come a time thereafter, that you attended a meeting in Mr. Contardi's office with the same people present?

A Yes.

Q Approximately when was that meeting held, if you remember?

A February.

Q Of what year?

A 1974.

Q How much time had elapsed from the last meeting in your office, to the meeting of February '74?

A Approximately six weeks.

Q Who was present at that meeting?

A Mr. Contardi, I believe Mr. McGuinness, and Mr. Webster, and yourself and myself.

686 Q Will you tell us what the purpose of that meeting was?

A Well, the purpose of that meeting was to see if we couldn't resolve the Van Etten job, among other things, and the charges

that the Carrier corporation had against Local Union 28.

Q Was the matter of differences between the parties resolved at that meeting?

A It seemed that way.

Q In what manner were the difficulties, as you say, it seemed that way, resolved between the parties?

A Well, I agreed to drop the charges against the Three Boro Corporation, who was doing the Van Etten job, and in turn, the Carrier Corporation would hold off on that charge against Local Union 28, until we could come to some sort of a resolution.

Q Was anything said with respect to the marketing of the moduline unit during this period?

A Yes.

Q What was that, sir?

A The Carrier Corporation would withdraw from selling the moduline unit, until we had resolved our differences.

Q During that meeting, what, if anything, was said regarding the ultimate disposition, or resolution between the parties?

A Well, I have got to be very careful the way I answer this. I don't want to go into a deep speech.

687 Well, it had been agreed that we will come up with some

sort of an agreement that I would present to the executive board in July, again, I accepted an agreement that Mr. Contardi had given to me, with hopes that I would present it to the executive board after June 30 of that coming year.

Q Is that what you told Mr. Contardi?

A Yes.

Q This agreement that he presented, what in substance did it contain; if you recall?

A It just contained -- I just can't recall it at the top of my head, but there was some movement towards moving the moduline unit again.

Q Mr. Pasquinucci, I show you General Counsel's Exhibit 2, appendix (u), the attachment; it actually is an attachment connected to U, and I ask you to read that statement (handing).

A Yes, I recall it now.

Q Is that the proposal that was submitted to you by Mr. Contardi at the meeting you are talking about?

A Yes.

* * * * *

CROSS EXAMINATION

Q (By Mr. Green) Mr. Pasquinucci, I take it that you did refer the question of the moduline unit to the Research and Review Committee; is that correct?

A Yes.

Q Did you have occasion to meet with them, from time to time, during their study of the problem?

A Only upon completion of their report.

Q Approximately when was that?

A That was around October.

Q Was that at the point in time when you had received a written document, a written report by the Committee?

A Yes.

Q At that point in time, I take it you read the Committee's report?

A Yes, sir.

Q Did you then have a discussion or a meeting of the members of the Committee, regarding the Committee's report?

695 A Yes.

Q Tell me, is it true that you went into the Committee report and saw what they did, and how they reached their conclusions?

A Yes.

Q Did you ask them questions about their report?

A Yes.

Q And probed them as to why they think one thing and why they think another thing?

A Yes.

Q I take it that as president of the union, you wanted to make sure, in your mind, that the three man committee was presenting something that was substantial to you, something that had some substance to you?

A Yes.

Q I take it that you felt that this was part of your responsibility, to make sure that what these three men said made sense; is that correct?

A Yes.

Q After reading the Committee report and going over it orally with the Committee, I take it you agreed with their conclusions?

A I went along with it.

JUDGE CONSTANTINE: He not only said that, but he said it to Mr. Contardi. Why go over something that is not in dispute?

696

Q Incidentally, with respect to the minutes of the various meetings, which are GC Exhibits 3,4,5, and 6; I just ask you to look at them for a second by yourself (handing).

A Yes.

Q Are those verbatim minutes of the meetings, or are they summaries?

A Just summaries.

Q So these minutes don't purport to say everything that was said at a particular meeting?

A No.

Q Now with respect to the meeting in June of 1973 --

JUDGE CONSTANTINE: According to my notes that would be June 5, but I don't guarantee that.

Q June 5 would be a meeting of the executive board?

A Yes.

Q Would these minutes be presented, or a report of what happened, to the General membership at a subsequent time?

A Yes.

Q Do you recall now when it was that the executive board's report was presented to the general membership?

A Sometime shortly after that, two weeks later.

Q I take it, that is the time when Mr. Bretz made a motion to oppose the executive board's report?

A Mr. Bretz did oppose the executive board report, yes.

697 Q And the membership adopted the executive board's report?

A Yes.

Q Are you familiar with the Van Etten job in the sense that you know that Three Boro was the contractor working on that job?

A Yes.

Q Are you familiar with the fact that -- or are you familiar that Three Boro employs a sketcher?

A Yes.

Q Was the sketcher employed by Three Boro a member represented by Local 28?

A Yes.

* * * * *

699 CROSS-EXAMINATION

Q (By Mr. McGuinness) Mr. Pasquinucci, you testified about a conversation in your office with Mr. Contardi, at which several people were present; I think you said I was there, and this was in about the first week of December of 1973?

JUDGE CONSTANTINE: My notes show December, maybe it wasn't the first.

MR. BOGEN: He said in response to my question, that he thought it was in December of '73.

MR. MC GUINNESS: Yes, I think that's right.

Q (By Mr. McGuinness) I mean the one in December.

A Yes.

Q I think you also testified that something was said about Mr. Contardi visiting a Local 28 shop?

A Yes.

700 Q Was anything more said about fabricating the plennum portion of the unit in Local 28 shops at that point, Mr. Pasquinucci?

A I don't think so.

Q Do you remember saying anything about, that if the plennum portion of the unit was manufactured in the Local 28 shops, there wouldn't be any problem?

A Yes.

Q Do you remember exactly what you said about them?

A I said -- I asked Mr. Contardi if he could, indeed, consider giving the fabrication to the Local 28 contractor, and then we wouldn't have no problem at all with the moduline unit, and it would be accepted in its entirety.

* * * * *

701 Q (By Mr. McGuinness) But, as I understand your testimony, during the meeting in December of '73, you told Mr. Contardi that if the plennum portion of the unit was manufactured in the local 23 shops, there wouldn't be any problem?

A Yes, I did.

Q Did you ever tell, or did you ever communicate to Mr. Contardi any change of that position?

A No, I did not.

Q And that continued to be your position?
A That was my position until the Executive Board accepted the resolution.
Q And the Executive Board didn't ever accept the resolution?
A They never acted on it, no.

* * * * *

FREDERICK ZWERLING

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

JUDGE CONSTANTINE: Please be seated and give your name and address to the reporter.

THE WITNESS: My name is Frederick Zwerling, I live at 4 Harvard Drive, Woodbury, New York.

DIRECT EXAMINATION

Q (By Mr. Bogen) Mr. Zwerling, what is your profession or occupation?
A I am president of Triangle Sheet Metal Corp., and Moduline Metal Corporation.
Q Are they two separate corporations?
A Yes.
Q How long have you had that position with them?

A About five years.

Q What is the work product or the business of Triangle Sheet Metal Corp., or Triangle Sheet Metal Works Company, Inc.?

A We manufacture and install all small metal components, and we also manufacture and install under-the-window air-conditioning units, enclosures, which some people call metal cabinet work.

Q What is the business of Moduline Metal Corporation?

A We manufacture, primarily, the under-the-window air-conditioning unit cabinets.

* * * * *

707 Q (By Mr. Bogen) Mr. Zwerling, are you familiar with the work that Triangle performed in connection with the moduline, the Carrier moduline unit at the police headquarters building?

A Yes.

708 Q On what basis, what is the basis of your familiarity with that?

A I was very intimately involved in all phases of the construction of that job, and the manufacturing of the job.

Q Will you tell us briefly how you came to perform that job?

A Yes; Triangle did the job, and, at the time the job

was bid to the City, we had an understanding with the mechanical bidder, who was Jarco Company, who obtained an award as low bidder of the H.V.A., heating, ventilating and air-conditioning contract. They were committed to us at the time the job was bid, and subsequent to their award of the contract, they awarded a contract to us for all of the sheet metal work. Part of that sheet metal contract was the furnishing and installation of the moduline unit for the police headquarters.

Q Prior to that time of the successful bid, were you familiar with the Carrier moduline unit?

A I was really only -- excuse me, I only became acquainted with it in the bidding process of the job. I had not seen the unit before the bidding process, but we were familiar with the unit that was going to be used in that building prior to the time we submitted our bid for the project.

Q What, if any, work was Triangle to perform with respect to the moduline unit?

A At the time the job was bid, there was an understanding between Carrier, the City, the design engineer, and Local 28, that the plennum portion of the unit would be fabricated by Local 28 in New York City. And, after receiving the job, we purchased the unit, the moduline section of the unit from Carrier, in accordance with the conditions set up in the

contract by the City, or within the City's contract. We manufactured the plennum to fit that unit.

Q Is the moduline unit we have here Respondent's Exhibit 1, the kind of unit that was involved in that job (indicating)?

A Neither of those units are the kind of unit involved in the job.

Q This has been identified as 37a; do you recall what was involved, the identity of the unit, that you were involved with at the time (indicating)?

A No, but if I saw a picture of it, I could tell you. That is it (indicating).

Q I show you what is GC's Exhibit 2, Appendix AA, and ask you to look at that for a moment.

(Pause.)

Having looked at that exhibit, can you now tell us what unit, or what is the model number of the moduline unit you were working with at the police headquarters?

A 37p.

Q Did you have plans and specifications on the moduline units for the work you were going to do?

710 A Yes; they were included in the original contract drawings prepared by the engineers for the City.

Q What did the plans and specifications with respect to

the unit show, if you recall?

A It showed a unit similar to this, with a plennum, and a duct connection to the plennum.

Q Was there any indication as to who was to fabricate the plennum?

A Yes; in the specifications, it called for Carrier to furnish the mechanical portion of the unit, and the plennum as it was indicated was to be sheet metal.

Q To be fabricated by whom?

A I don't remember if it said who was going to fabricate it, but the purchase order that was set up in the contractual document; there was a complete purchase order included, that the contractor had to assume, in which they were going to place with Carrier after they awarded that contract, that covered only the bottom portion.

Q When you say the rest of it was sheet metal, that is not only the plennum, but the rest of the sheet metal in the building?

A That is correct.

Q Did there come a time when Triangle undertook the fabrication of the plennum for those units?

A Yes.

711 Q Where was the fabrication of the plennum, where did

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that take place?

A In our plant, in College Point, Queens.

Q Were you familiar with the plans and specifications or the sketches insofar as the plennums were concerned?

A Yes.

Q Had you ever made plennums similar to this or compatible to this before?

A Many times.

Q How many times in your history has Triangle made plennums similar or comparable to this (indicating)?

A If you are talking about the exact dimensions, obviously very rare, but if you are talking about similar, and I mean substantially similar to that, we have made them thousands of times.

Q Was there anything different from this plennum, except for the size and specifications, that you had from any of the thousands of plennums that your company made before?

A No, it was very simple sheet metal work.

Q The plans and specifications with respect to the plennums you indicated came from the engineers or architects; is that correct?

A Correct.

Q Was there any work in terms of plans or specifications done by employees of Triangle, with respect to the plennum?

712 A Yes.

Q What was done with respect to these plans or specifications?

A The original contract drawing did not show the detail connections of the connection to be made between the portion Carrier was furnishing, and the plennum to which it was going to be attached. So, we received from Carrier, drawings which we reproduced for our shop purposes, the way we were going to fabricate it matches the dimensions exactly, and the hole locations and everything, so the pieces would fit perfectly together. It was nothing more than matching one hole to another hole.

Q Has Triangle performed the matching of the holes with respect to air-conditioning units in the past before?

* * * * *

717 Q Did you ascertain the cause of the leakage?

A We did.

Q What was the cause of that leakage?

A The cause of the leakage was that on the frame that was

718 fabricated by Carrier, the frame itself was not airtight; and when installed over the plennum that we had fabricated from dimensions that they gave us, the plennum was actually a little too big, and it stretched the frame on the moduline,

which caused air leakage through the moduline itself.

Q Did you call this defect to the attention of Carrier?

A We did so, we wrote to them about it.

Q Were you familiar with this test and the results of the test?

A Yes.

Q Were there meetings held with respect to this defect?

A Yes.

Q I show you Respondent's Exhibit 4 for identification, Mr. Zwerling, and ask you if you can identify that document, without referring to the contents thereof (handing)?

A If I can identify it?

Q Can you identify it?

A It is a letter from Triangle Sheet Metal Works to Carrier Corporation, confirming discussions held at a meeting.

Q With respect to that meeting, sir, what was the subject matter of that meeting?

MR. GREEN: I am going to object, unless there is a foundation laid that this witness attended that meeting.

Q (By Mr. Bogen) Did you attend the meeting, Mr. Zwerling?

A No.

719 JUDGE CONSTANTINE: All right, then, I will sustain the objection.

Q (By Mr. Bogen) You mentioned before that there was a meeting and correspondence with Carrier with respect to the defect in the unit?

A That is correct.

Q Is Respondent's Exhibit 4 for identification one of the letters sent in connection with that correspondence you mentioned?

A Yes, it is.

Q Are you familiar with the contents and subject matter of the correspondence?

A Basically, yes.

MR. BOGEN: I offer Respondent's Exhibit 4 for identification, Your Honor.

JUDGE CONSTANTINE: Show it to them, please.

MR. BOGEN: They have copies of them.

MR. GREEN: I have no objection.

MR. MC GUINNESS: No objection.

JUDGE CONSTANTINE: It will be received into the record in absence of an objection.

(The document, heretofore marked Respondent's Exhibit 4, was received in evidence.)

Q (By Mr. Bogen) Now, Respondent's Exhibit 4 in evidence refers to a meeting of September 26, 1972; was that the first

720 meeting in which the defect in the Carrier unit fabricated by Carrier was taken up, to your knowledge?

A No, it was not the first meeting.

Q What was the first meeting that you recall, between Carrier and Triangle representatives in respect to the defect of the unit?

A I couldn't tell you the exact date of the meeting, but that meeting was set up at my suggestion by my brother Charles, as a meeting that was arranged to resolve the problem that we had already orally discussed with Carrier.

Q Had you personally advised Carrier of the defects that were found in the plans or specifications?

A It wasn't really --

Q A defect in the unit.

A No, I personally did not; Charles Zwerling personally contacted them.

MR. BOGEN: Would you mark this as Respondent's Exhibit 5 for identification.

(The document above referred to was marked Respondent's Exhibit number 5 for identification.)

Q (By Mr. Bogen) I show you a document marked Respondent's Exhibit 5 for identification, Mr. Zwerling, and ask you to

read it, and ask you if you can identify it (handing)?

MR. BOGEN: That is Carrier's letter of October 4th, I believe, 1972.

A Yes, I can identify it.

Q What does that document represent?

A This is a letter from Carrier Corporation to Triangle Sheet Metal Works to Charles Zwerling at Triangle Sheet Metal Works, describing the results of the meeting on the job site, subsequent tests, and the conclusions that Carrier had come to as to how the defect should be corrected.

MR. BOGEN: I offer Respondent's Exhibit 5 in evidence, Your Honor.

MR. GREEN: No objection.

MR. MC GUINNESS: No objection.

JUDGE CONSTANTINE: It will be received. Mark it, Mr. Reporter.

(The document heretofore marked Respondent's Exhibit 5, was received in evidence.)

Q (By Mr. Bogen) Mr. Zwerling, during the period of time that these tests and meetings were going on, were you involved, personally, or did you have personal knowledge of what was happening with respect to the units?

A Yes; I was in close contact with Charles Zwerling at

every step of the progress of these units from manufacturing by us.

Q After the first series or the testing that you mentioned, did your company continue to test the unit for performance?

722 1 A No; we brought it to Carrier's attention.

MR. BOGEN: Would you mark this as Respondent's Exhibit 6.

(The document above referred to was marked Respondent's Exhibit number 6 for identification.)

Q (By Mr. Bogen) I show you this document, which is marked Respondent's Exhibit 6 for identification, and ask you to read it, and ask you if you can identify that document (handing)?

A This is a letter from Carrier's district sales manager to Triangle Sheet Metal Works.

Q Was the subject matter the defects in the unit that we are talking about?

A That is basically the same subject matter as was covered in the meeting in the earlier letter you showed me.

MR. BOGEN: I offer Respondent's 6 in evidence.

MR. GREEN: No objection.

MR. MC GUINNESS: No objection.

JUDGE CONSTANTINE: In the absence of objections, it may be received. Mark it received, Mr. Reporter.

(The document, heretofore marked Respondent's Exhibit 6, was received in evidence.)

Q (By Mr. Bogen) Mr. Zwerling, you mentioned that as a result of the testing of your company, and the ascertaining of certain defects, there were certain meetings held, correspondence, and that there was a solution to the defect developed or suggested?

A That is correct.

Q What was the solution to the defect or the problem that had arisen?

A The suggestion by Carrier involved us placing some additional screws in the plennums so that the moduline unit could receive them, and special -- I say special, but the application of a sealing compound between the moduline unit and the metal plennum, which we fabricated to secure air-tightness.

Q Did you engage in this work or these corrective measures? Did Triangle accept the suggestion to correct it or to cure the defect?

A We did.

Q Did this involve an additional expense and cost to

Triangle?

A It did, yes.

Q How was that cost or expense handled?

A We quoted to Carrier prices for this additional work.

Q Did Carrier pay the additional price for the additional work?

A I believe a settlement was made, the amount I'm not aware of at this time.

724 MR. BOGEN: Would you mark this as Respondent's Exhibit 7, please.

(The document above referred to was marked Respondent's Exhibit number 7, for identification.)

Q (By Mr. Bogen) I show you a document marked Respondent's Exhibit 7 for identification, and ask you to read it, and then I ask you whether or not you can identify that document (handing)?

A This is a letter to Carrier from Charles Zwerling, immediately after all the preceding letters that we have just looked at.

Q Were you familiar with the contents of that letter, or are you familiar with the subject matter of that letter?

A Yes, this letter is a series of quotations for added work in making or assembling the plenum as quoted by Charles Zwerling to Carrier.

MR. BOGEN: I offer Respondent's 7.

MR. GREEN: No objection.

MR. MC GUINNESS: No objection.

JUDGE CONSTANTINE: In the absence of objections, it may be received. Mark it received, please, Mr. Reporter.

(The document, heretofore marked Respondent's Exhibit 7, was received in evidence.)

MR. BOGEN: Mark this as Respondent's Exhibit 8 for identification.

725 1

(The document above referred to was marked Respondent's Exhibit number 8 for identification.)

Q (By Mr. Bogen) I show you Respondent's Exhibit 8 for identification, and ask you would you please read that, and then, whether or not you can identify it (handing)?

A Yes, this is a letter from the Carrier's district service manager to Charles Zwerling at Triangle Metal Works.

MR. BOGEN: At this time, I offer the document, Your Honor.

MR. GREEN: No objection.

MR. MC GUINNESS: No objection.

JUDGE CONSTANTINE: It is received in evidence. Mark it, please, Mr. Reporter.

(The document, heretofore marked Respondent's Exhibit number 8, was received in evidence.)

* * * * *

727 Q (By Mr. Bogen) Were all the units assembled at the job site?

A Yes.

Q Who installed the units after the assembly?

A Members of local 28.

Q After the installation of the units, was there any testing or evaluations done with respect to the unit and its operation?

A Only checks on air distribution from the units.

Q After you had corrected, or after the corrections were made as set forth in the correspondence, Exhibits G through 8, did the unit function?

A Yes.

Q Properly?

A Yes.

Q You stated that after the unit was installed, there was

a testing with respect to air in the unit?

A Air distribution.

Q How was that testing accomplished?

728 A I can't show it on these units, but there are certain tubes that come out, that you measure air, the air handling capacity of the unit.

Q Who tested or what is that test called, sir?

A It is called testing and balancing.

Q Did Triangle perform that test and balancing?

A I don't recall.

Q Did there come a time when a report was made with respect to the results of that test and balancing?

A Yes.

Q What were the results of that?

A The building was working satisfactorily, and accepted by the owner for occupancy.

Q To your knowledge, sir, was there any guarantee or warranty involved with the use of the unit?

A There was a guarantee for the entire building, yes. The air-conditioning system.

Q Was that Triangle's guarantee insofar as the air-conditioning was concerned?

A I think as far as the duct work and the moduline system

and everything, yes, we had to guarantee them.

Q Did you guarantee them?

A Yes.

Q Did Carrier guarantee the operation of the moduline system?

729 A Carrier guaranteed to us the operation of the portions of the unit that they furnished, yes, sir.

Q To your knowledge, sir, has there been any other claim of defect under Triangle's guarantee or warranty for its work there?

A There has been no complaint made to Triangle or notice from the owner to Triangle about defects in those units.

Q To your knowledge, has there been any complaint made under Carrier's warranty, with respect to the mechanical operation they furnished to you?

A If there were any, they were furnished to Carrier, I would have no knowledge of it, but there were none that were furnished through us for Carrier.

Q Has Triangle performed and engaged in any other work for Carrier involving the Carrier moduline unit?

A We are on a very large project now where the Carrier moduline unit is going to be installed.

Q Where is that?

A Basking Ridge, New Jersey.

Q That is outside of New York City?

A Yes; most of New Jersey is.

Q Was there any other project or any other work performed by Triangle in regard to the moduline unit, in New York City?

A There may have been some jobs that I had a few of them on the job, but they are in other buildings that we were involved with, other than the police headquarters, where there is a major air distribution component in the building.

Q The fabrication of the plennum for the unit 37 p that you did, would that affect, in any way, the operation of the unit, insofar as Triangle is concerned?

A Not of the unit we manufactured, no.

* * * * *

Mr. Green?

CROSS-EXAMINATION

Q (By Mr. Green) Mr. Zwerling, I am showing you Respondent's Exhibits 4 through 8, you will notice they are addressed to Charles Zwerling or from Charles Zwerling; is that correct?

A That is correct.

Q Who is Mr. Charles Zwerling?

A Charles Zwerling is my brother, and he is vice-president of Triangle Sheet Metal Works, and he was the project manager

that handled this particular project.

Q So, he was responsible to make sure that this project, insofar as the moduline unit worked and went about okay?

A The entire project, not just the moduline unit.

731 Q I take it, that was not your responsibility, too?

A What?

Q You were not the project manager, were you?

A I was not the project manager.

Q I believe you stated before that you know about the questions related to the moduline from conversations with your brother?

A And samplings that I saw and pieces that we had built that I held in my own hands, and drawings that I was instrumental in having drawn.

Q You looked at various items?

A Yes.

Q Did you have any conversations with Carrier representatives regarding the moduline unit?

A Personally, no.

Q Did you visit the job site, and meet with Carrier?

A I visited the job site, but I had no meetings at the job site with Carrier.

Q Were you personally involved in supervising the testing

of the moduline units?

A I was not.

Q Were you involved with the assembly of it in terms of supervision of the assembly of the plennum part to the controlled part?

A No, our foreman handled that supervision.

732 Q And I take it that you know about those units by conversations with the foreman and your brother; is that correct?

A That is correct.

Q With respect to Respondent's Exhibit 7 on the back page, the second page, there is a figure of $26,400.

A Correct.

Q Could you tell us what that represents?

A That represents the sum of all of the quotations included in this letter, multiplied by the number of units, so that if everything were done exactly the way it was quoted here, it would come to a sum total of $26,400.

Q Does this represent a sum of money for the corrections that Carrier suggested, with respect to the moduline unit?

MR. ZOGEN: Objection, Your Honor. That is not a suggestion for the correction to the unit, it was a suggestion for the correction of the defects in the unit.

JUDGE CONSTANTINE: I will allow the question, he knows

what the question is.

A Would you repeat the question?

Q Does the sum of money on that second page represent additional costs by Triangle to correct certain problems with manufacturing the plennum for the Carrier unit?

A Yes.

Q That represents the additional cost for Triangle, $26,400?

733 A That represents the quotation to Carrier.

Q That is not the cost that Triangle company would incur?

A I should hope that Triangle would incur a cost that would be somewhat less than that.

Q So the cost, that encompasses a profit? That price would include additional profit for Triangle; is that not right?

A I would assume it would.

Q That is not the cost?

A That is correct.

Q And you will notice that on Respondent's Exhibit 8, the figure is for $10,000?

A Well, that's what you are saying.

* * * * *

7341 Q (By Mr. Green) I ask you, did you receive $10,000 from them?

A Yes, we did.

Q Did you receive more than $10,000?

A Not to my knowledge.

Excuse me, we did receive more than $10,000; we received $10,000 plus Carrier furnished to us the sealer and the glue, and a supervisor to initially insure that the procedure that they wanted followed, would be followed.

Q That is money?

A That is material.

Q Material is money?

A Yes.

Q They furnished a supervisor?

A They furnished materials and a supervisor, that is money, yes.

Q What do you mean by a supervisor they furnished?

A Well --

Q I asked you about a supervisor.

Did they have an engineer come down from Carrier to your home to supervise certain things in your shop?

A I can read the letter --

Q I am asking you a question, I am not asking you to read the letter.

A They sent a man to the job to supervise the procedures

that they wanted followed.

Q Where did they send him?

A To the job site.

Q Do you know what kind of man this was?

A I do not know who the man was, no, sir. And, they also furnished us materials.

Q Carrier furnished you certain types of material?

A Yes; which were part of our original quotations.

Q Have you ever manufactured plennums for Carrier's moduline unit before the police headquarters building?

A No, sir.

Q Did you ever manufacture plennums for the model 37a unit, that is, Respondent's Exhibit 1 (indicating)?

A No, we never have, sir.

Q Is it correct, then, that the only time that Triangle has ever fabricated plennums in relation to Carrier's moduline unit, only was the police headquarters job?

736 A Yes, sir.

* * * * *

Q (By Mr. Green) Did not Carrier assume responsibility for the workings of the entire unit?

A I truly don't know how to answer that question. We give a guarantee, a written guarantee to the owner. Carrier has

a written guarantee with us, if for any reason the owner should seek to enforce its guarantee upon us for everything in our contract, including Carrier and equipment, we are legally obligated, so I don't understand your question. There is no way that we can tell the City that they have no guarantee from us, because, in fact, they do.

Q Does the City have any guarantee from Carrier, to your knowledge?

A They may have, as I said before, we have to guarantee everything that we furnished and/or installed on the job.

737 Q So maybe the City has a guarantee from two people?

A That is entirely possible.

MR. GREEN: I have no further questions.

JUDGE CONSTANTINE: You may cross-examine, Mr. McGuinness.

CROSS-EXAMINATION

* * * * *

738 Q (By Mr. McGuinness) Mr. Zwerling, have you ever installed any Carrier 37a model units anyplace?

A Do you have a diagram of that so that I might see it?

Q That is a 37a (indicating).

MR. BOGEN: Referring to Respondent's Exhibit 1.

JUDGE CONSTANTINE: Which is the one on the left.

MR. BOGEN: They are both model 37a.

A (Continuing) To my knowledge, we have not.

MR. MC GUINNESS: No further questions.

* * * * *

739 MR. BOGEN: At this time, Your Honor, we call Mr. Jack Flannery.

Whereupon,

JOHN J. FLANNERY,

was called as a witness by and on behalf of the respondent and, having been first duly sworn, was examined and testified as follows:

JUDGE CONSTANTINE: Give your name and address to the reporter.

THE WITNESS: John J. Flannery, 33 Northview Avenue, Upper Montclair, New Jersey.

MR. BOGEN: May I proceed, Your Honor?

JUDGE CONSTANTINE: Go ahead, yes.

DIRECT EXAMINATION

Q (By Mr. Bogen) Mr. Flannery, what is your professional occupation?

A Steel metal contractor.

Q By whom are you employed?

A J. J. Flannery, Incorporated.

Q What is your position with J. J. Flannery, Incorporated?

740 1 A I'm president.
2 Q How long have you been president?
3 A Seventeen years.
4 Q Prior to your presidency, with the company, what pro-
5 fessional occupation did you follow?
6 A I was a sheet metal estimator for Howard Platter Co.,
7 sheet metal works.
8 Q How long were you a sheet metal estimator?
9 A Five years.
10 Q What did your job as an estimator consist of?
11 A Taking off plans, quantity work-ups, pricings to be
12 submitted on a complete bid.
13 Q What problems or what systems were you working on?
14 A Heaters, ventilating, and air-conditioning, kitchen
15 exhausts.
16 Q Do you hold any degrees?
17 A Yes, I have a bachelor of civil engineering degree from
18 Manhattan College.
19 Q Do you hold any certificates from the State of New York?
20 A I am a professional engineer in New York State.
21 Q How long have you been a professional engineer?
22 A Approximately 20 years.
23 Q Can you describe, briefly, the business affairs or the

operation of J. J. Flannery Company, Incorporated?

A We do mostly subcontracting work for mechanical contractors, we do the sheet metal work; we furnish outlets, sound traps, and we bid all of the work necessary to take care of the air side in a high pressure or low pressure air-conditioning job.

Q To your knowledge, did J. J. Flannery ever perform any work or services with respect to a moduline unit being fabricated, or the Carrier moduline unit?

A Yes, we did.

Q When was the first time that you performed any work with regard to the Carrier moduline unit?

A I would say approximately five years ago.

Q In connection with what job or facility did you perform that work?

A We have done either two or three jobs at Presbyterian Hospital.

Q Was that the work you are talking about five years ago?

A I will tell you, we did that work about three years ago, and probably a year or so ago, we made some boxes for the job at Pearl Street; I think the name of it was Bache & Co. We didn't install them, we just made them and delivered them to the job.

Q When was the first job, the work you performed in connection with the Carrier moduline job?

A The Bache & Co. job, which was four or five years ago.

Q How did you secure that job?

742 A The job was for Alvord & Swift, they were the mechanical contractors, and for some reason or other, they had us make the plennums for the moduline units and deliver them to the job.

Q Did you bid that job?

A No, we didn't bid that job.

Q You were just hired for that?

A Alpine Sheet Metal was on the job, and they were very busy at the time, and for one reason or another, they wanted me to make the boxes, but not to install them, but just bring them down to the job, and they would be installed by Alpine.

Q Did you receive any plans and specifications with respect to the boxes?

A Well, we received the dimensions to make the unit, yes.

Q Who did you receive them from?

A Alvord & Swift.

Q Do you know if the unit that you were working on, the Carrier unit, did you know the number, the model number?

A As I remember, it had a p designation.

Q I show you GC Exhibit 2a, and ask you if you look at that exhibit, does that refresh your memory as to what unit of it you worked on?

A This was the type of unit; we made the plennum section from the top.

Q That is the 37p?

A Yes.

Q When you refer to the plennum, what was the plennum that you were working on?

A It's a rectangular sheet metal box, it looks like a piece of galvanized steel metal.

Q After you got the plans and specifications from Alvord & Swift, what did you do with them?

A We used the plans to fabricate the box.

Q Did you have any special or additional drawings made?

A We would have made our own shop drawings from the dimensions given.

Q Who in the shop would have made these drawings, if you know?

A One of the sketchers would.

Q Is that one of the sketchers who is one of your employees; is that correct?

A That is correct.

Q Would that have been a member of Local 28?
A Yes.
Q After this sketch, the shop drawings were made, what happened next?
A Then we put the sketches into the shop, and the material was fabricated, it is cut, bent, formed to satisfaction.
Q What category of employees fabricated the boxes?
A Local 28 mechanics.
744 Q In the past, Mr. Flannery, has your company fabricated similar boxes, comparable boxes to this plennum (indicating)?
A We have.
Q How long have you fabricated similar or comparable boxes?
A What do you mean comparable? They are just rectangular boxes, and it is similar to just a straight piece of box work.
Q How long in your 17 years as president, has Flannery made such a box?
A Numerous times.
Q A hundred or more?
A Yes.
Q A thousand or more?
A Yes.

Q Is there anything different from the boxes that you were fabricating for the 37p, the plennum, for many of these other boxes, except possibly the size of it (indicating)?

A No.

Q And the plennums that you told us you made, that were made by Flannery, did they come in various sizes?

A Yes.

Q Various shapes?

A Yes.

Q Is the type and the shape of the plennum that you made for the 37p any unusual or different from any other sizes and shapes?

A No.

Q Prior to your fabricating the plennum, had you ever seen the unit, the 37p, before?

A No.

Well, that isn't true, I just thought of a case where I did see it, but we hadn't made them.

Q You say you saw it before you started fabricating them?

A Yes. We had a joint adjustment board meeting of the Association and Local 28. I would say this took place in 1967, and, at that time, a unit similar to the unit standing against the wall, a little bit different shape, more the 37p

type, one was laying on the table when we had the joint adjustment board meeting with reference to the boxes.

Q That joint adjustment board meeting, that involved a charge by Local 28 against Carrier?

A That is correct.

Q Other than that, when you first started to fabricate the units for Alvord, had you seen the 37p before?

A No, only that one time I saw it laying on the table.

Q How many units did you fabricate for the Alvord job?

A Over a thousand, I believe it was 1300 or 1400.

Q How long, if you recall, did it take you to complete one of the boxes, fabrication from the drawings?

746 A To do one box?

Q Yes.

A It doesn't take long to do one box, you mean on an average? I don't know what you are looking for.

Q Let's take the thousand, how long did it take you to complete the entire thousand?

A We didn't work on them steadily, I would say that they averaged out somewhere like a half an hour a box.

Q With the time and with the tools that you used in making that box, were they the same or different from the tools that you used in making other plennum boxes that you talked

about?

A Just the same, we didn't retool to do this job.

Q Did you retain a sheet metal expert?

A No, we didn't.

Q Did you have any special expert or any special program for the sketcher who did the box?

A No.

Q In your opinion, based upon your experience with respect to the fabrication of the boxes, and the sketching of it, how would you compare this box in terms of difficulty or complexity, to the other boxes you have done?

A The only thing we had to do special was to make sure it was airtight, and sealed, as we would any high-pressure duct.

Q Was it complex at all?

747 A No.

Q Do you seal other boxes for air also?

A Yes, we do.

Q Is there anything different with respect to the sealing of this box, that is, the plennum made for Alvord, and the other sealings that you do?

A No.

Q Did you assemble the completed plennum to the mechanics, or the mechanics other part?

A No.
Q Do you know who did?
A I presume Alpine did.
Q Do you have any personal knowledge with respect to that?
A No, we just delivered them to the job site.
Q After you delivered them to the job site, what else, if anything did you do with respect to the plennums or the boxes?
A It was our job just to fabricate and deliver them.
Q After you delivered the boxes, did you have occasion to receive any complaints or comments as to the function of the boxes?
A No, we had no complaints, no punch lists, no back charges, no nothing.
Q Do you give a warranty, or is a warranty or guarantee issued with the work you performed with regard to this?
A In our business, you don't get paid until they are happy, and that is as much a guarantee as anything.
Q Did they pay you for the job?
A They sure did.
Q Did you hear anything further with respect to those units?
A No, I never did.
Q Now you said you had performed, or you had done some

other work in connection with the unit. When was the next time that you did anything involving the moduline unit, the Carrier moduline unit?

A I did some work on the third floor, I believe it was, in the Harvest Pavilion, at the Presbyterian Hospital.

Q Approximately when was that, Mr. Flannery?

A Approximately two or three years ago.

Q Will you tell us the circumstances under which you obtained that job?

A That job was, again, a job for Alvord & Swift, and they were the mechanical contractors, and we had the job to put in the duct work; and as part of the duct system, we had these Carrier plennums, the 37p.

Q How many units were involved in that job?

A I would say in the neighborhood of 30 or 40, in that category.

Q Did you bid that job?

A Yes, we did.

749 Q I think you told us you got the entire -- all of the sheet metal work?

A That's right, we also furnished the Carrier moduline unit on the job.

Q What was your responsibility with respect to the Carrier

moduline unit?

A As part of our contract, to furnish and install it, and that was it.

Q Did you assemble it also?

A We purchased the Carrier 37p without the plennum, without the box on the top. Then we had it shipped to our shop, the Carrier units were shipped directly to our shop. We assembled the plennums on top in the shop, and then sent them to the job where we hung them.

Q Were you furnished plans and specifications with respect to the plennums to be fabricated under that contract?

A We did have some drawings on them, but what we did was, we purchased one unit from Carrier with the plennum on the top, just to be sure. Sometimes you can read a sketch or read a blueprint and make a mistake.

Q Did you have the plans and specifications?

A Yes, we did.

Q Were sketches made of that at your shop also?

A No, we didn't make any sketches of them.

Q From whom did you purchase -- you said you purchased one of the units of the 37p?

750 1 A We purchased the 37p without the plennum before the job, but we purchased one unit with the plennum on top so we would

be sure that we fabricated it the same way Carrier would do it, and we wouldn't have any complaints on the job.

Q Who fabricated the plennum on this job?

A Local 28.

Q Were they assembled at the shop?

A That is correct.

Q Who assembled them at the shop?

A We only employ Local 28 people.

Q And they did the job?

A Yes, they did.

Q Were the plennums fabricated before you received the mechanical parts from Carrier, or did you receive them first?

A Well, let me explain to you what happened.

Q Tell us what happened.

JUDGE CONSTANTINE: Just answer the question.

You have asked him a question, whether they were assembled before or after.

MR. BOGEN: I will withdraw the question.

Q (By Mr. Bogen) We have already established that you fabricated the plennums for those jobs, these 30 items?

A Yes.

Q You fabricated the plennums before or after you received

751 the mechanical part from Carrier?
A Oh, after.
Q How long did it take you to fabricate the plennum for these units?
A Between a half hour and an hour per box.
Q How long did it take you to complete the entire 30 -- did you average about an hour?
A Yes.
Q Thereafter, what did you do with the plennums?
A Then we sent the whole thing out as a unit.
Q Had the plennums -- did you assemble it in the shop?
A We sent the 37p without a plennum, and we put the plennum on in the shop, and we sent them to the shop as a functioning unit.
Q Before you sent them out to the job site, did you have occasion to test or to see that they met the specifications or plans?
A We didn't do any testing of it, but the Carrier did want to come and see the box before we did any installation, so we made a few of them and sent them to the job, and they had some gentlemen come to the job site. And, he said, "if you make them this way, okay." And they okayed them, and then we completed the fabrication.

Q Is there a normal practice with respect to the items you fabricated to get an okay from the principals as to the
752 plans and specifications?
A That is not a normal deal, to have the manufacturer to come and check out what we do, but it was a new item, and they were concerned about it; and he checked it out and said it was fine.
Q Was there any complaint from Carrier as to how the plenmums were done?
A No.
Q Was there any complaint or criticism with respect to the assembly of the item?
A No.
Q You took it to the job, who installed it on the job?
A Local 28 mechanics.
Q How long did the installation take?
A Probably it takes half an hour or an hour, and you put it up and tie it in.
Q Did there come a time after you installed it, that you tested it? Did you test the unit at that time, after it was installed?
A That particular job, the one we are talking about now on the third floor at the Harvest Pavilion, was a job where

we were just putting in duct.

JUDGE CONSTANTINE: Just answer the question; did you or did you not test it?

THE WITNESS: No.

753 Q (By Mr. Bogen) Were the units ever tested?

A I wouldn't know.

Q Did Flannery issue a warranty or a guarantee with respect to that?

A No.

Q After the installation of these units, did you receive any complaints either oral or written with respect to the operation of them?

A No.

Q Was there any other job in which you performed services or work in connection with the Carrier's moduline unit?

A The Vanderbilt Clinic.

Q When did that take place, sir?

A We initiated it about a year and a half ago, we started about approximately two and a half years ago.

Q What were the circumstances under which you obtained that work?

A Alvord & Swift was the mechanical contractor, they subcontracted to us the fabrication and installation of the duct

work, and we also furnished the Carrier moduline, and all grills and sound traps on the job.

Q Did you bid that job?

A Yes, we did.

Q When I ask you did you bid that job, and other jobs; were there other bids, to your knowledge, for this work?

754 A Yes, there were.

Q Do you know by whom those bids were made?

A I couldn't recall.

JUDGE CONSTANTINE: I don't think it matters, don't worry about it.

Q (By Mr. Bogen) How many units were involved in the Vanderbilt job?

A It was less than a hundred, you know, it was not two or three, it was 50 or 60, or 70, I don't know exactly.

Q Were there plans and specifications involved with that particular job?

A Yes, there were.

Q Did you receive copies of those after the successful bid?

A Yes, we did.

Q What did you do with those plans and specifications?

A We handled it just as we did the previous job on the

third floor, at Harvest Pavilion, because it was all part of the same complex at Presbyterian Hospital.

Q Did you at the time buy a mock of or have another unit to work on?

A We had the experience from the third floor of the Pavilion, and we didn't go through that routine this time.

Q Was the same unit involved, 37p?

A The same unit, to my knowledge.

755 Q Were the boxes the same ordinary boxes?

MR. GREEN: I object to the use of the words ordinary boxes, he is characterizing the witness's testimony for the witness.

MR. BOGEN: I will withdraw it, Your Honor.

Q (By Mr. Bogen) Was the plennum box that we are talking about for the Vanderbilt job the same box that you fabricated for the other boxes at the hospital?

A I can't swear to the size, it was an inch or two, but the same type of box.

Q Were the boxes that you made for the hospital, that you have been describing, except for the fact that there may be an inch or two maybe a little wider or longer or shorter, are they essentially the same sheet metal box as we are talking about?

A Yes.

Q Except for the possible dimensions, is it the same box and plennum you talked about when you said you made up hundreds and thousands of them?

A Yes.

Q Did you fabricate the plennum for the Vanderbilt job before or after you received the mechanical parts from Carrier?

A After.

Q Did you assemble or did your company assemble the unit?

756 A Yes, we did.

Q Where did you assemble them?

A In the shop.

Q Who assembled them?

A Local 28.

Q After they were assembled, what, if anything, do you do?

A We sent them to the job and installed them.

Q Was that similar to the prior job? If I asked you the same questions about this job, would the answers be the same?

A Yes, with the exception of having them tested, at this job we tested them.

* * * * *

CROSS-EXAMINATION

Q (By Mr. Green) Mr. Flannery, with respect to the Harvest Pavilion job, as I understand your testimony, you put a model 37 plennum attached from Carrier.

A I bought one so that we could know what they require, and do the same thing.

Q On that job, you had a meeting with Carrier personnel before installation?

A Yes, we did.

Q With respect to the Bache & Co. job, your contract was with Alpine or somebody else?

A Alvord & Swift.

Q Was that a written contract?

761 A Yes.

Q You were to make boxes?

A Yes.

Q Rectangular boxes?

A Yes.

Q You were to furnish those boxes to another company; is that not correct?

A We brought them to the job site, and Alpine was there.

Q You don't know what happened to them after that?

A We left them on the ground floor.

Q How many years prior to the Harvest Pavilion job?
A A year or two.
Q Are you absolutely certain this was a Carrier moduline unit?
A To the best of my knowledge.
Q Was it stated in the contract?
A I have a contract.
Q Is it here?
A I don't have the contract here. I was here yesterday and --
Q I am asking you whether or not you have the contract here?
A No, I don't have the contract here.
Q Have you looked at that contract recently?
A I was asked at 5 o'clock yesterday to be here this morni
762 and I haven't been in the office since.
Q You said you made a similar type of box in the past before 1965?
A Similar type boxes.
Q Similar to the ones you made for the Bache & Co. job?
A I don't believe I said that.
MR. BOGEM: That is not his testimony. He said similar to the boxes, to the 37p, is what the witness testified to.

He didn't identify them by Bache or any other job.

JUDGE CONSTANTINE: Well, my notes indicate that the Bache job was the first job, and that he was told by Alvord & Swift. My notes also show -- I'm not saying it is so -- that it involved a 37p unit, a moduline unit. That is what my notes show.

MR. GREEN: There was also testimony that the plennum was a box, and he made a lot of boxes.

JUDGE CONSTANTINE: I think he did testify on this, so you are entitled to cross-examine on it.

Q (By Mr. Green) Have you made boxes of that type before the Bache Job (indicating)?

A Okay, yes.

Q Are you still certain that that job where there might have been these 1300 or 1400 boxes was for a Carrier unit?

A To the best of my knowledge.

Q I don't know what you mean by the best of my knowledge.

763 MR. BOGEN: I object to that.

JUDGE CONSTANTINE: He is under oath, and it isn't a matter of guessing.

MR. BOGEN: He is testifying as best he can. And then Mr. Green started to argue with him.

JUDGE CONSTANTINE: He did not argue. When the witness

said to the best of his knowledge, that isn't helpful, that is why he was asked the question in such a way; to find a more definite answer from the witness. I think he is entitled to it.

Q (By Mr. Green) Can you say yes or no as to whether it was or was not a Carrier unit?

A No, I can't say.

Q Incidentally, these kinds of boxes that you described that your company makes, are these totally enclosed boxes?

A We make a four side box, we make boxes with ends on them, boxes without lines, lined boxes, solid boxes, copper boxes, aluminum boxes.

Q You make a lot of boxes.

A We are in the box business.

Q Have you ever made a box or a plennum unit for the 37a unit?

A No.

Q Do you know the address of the Bache & Co. job site?

A It is on Pearl Street.

* * * * *

JUDGE CONSTANTINE: Mr. McGuinness?

CROSS-EXAMINATION

Q (By Mr. McGuinness) On the Harvest Pavilion job,

Mr. Flannery, you testified there were 30 or 40 units; could it have been a lesser number than that?

A It could have been 28 or 26.

Q Could it even have been as low as 14 units?

A I doubt it.

Q So, you aren't sure as to what the number was?

A No, that is why I said 30 to 40.

MR. MC GUINNESS: I have nothing further.

MR. BOGEN: I have some redirect, Your Honor.

JUDGE CONSTANTINE: All right, go ahead.

REDIRECT EXAMINATION

Q (By Mr. Bogen) Mr. Flannery, with respect to the plennum box that you fabricated for the Bache & Co. job, was that similar or different from the boxes, the plennums that you fabricated for the Vanderbilt and for the Presbyterian Hospital jobs.

A To my knowledge, they were all 37p.

Q So they were all the same? There was a question raised in cross-examination as to whether or not the plennum boxes that you fabricated for the Bache Co. job was actually the 37p or a Carrier unit; do you recall that cross-examination?

A That is correct.

Q And you said you couldn't say for absolutely certain;

do you recall that?

A Yes.

Q Can you say for absolutely certain what the purpose of the box was?

A The two of them go together, I already said this was five years ago.

Q You say that you weren't sure it was from a Carrier unit; what was the purpose of the fabrication of the box; what was the purpose of the fabrication?

A For the plennum to go on top of the Carrier unit, to the best of my knowledge.

Q There was a question as to whether it was a Carrier unit.

A It could have been some other unit.

Q Is there any doubt in your mind that it was a plennum of some kind of a variable volume system; is there any question in your mind about that?

766 A No.

Q In your best recollection now, is that it was for a Carrier unit?

A That is correct.

Q But whether it was for a Carrier or some other unit, it was a variable volume system; is that Correct?

A I couldn't swear to that.

* * * * *

MR. BOGEN: I call Mr. Thomas Berrill.

Whereupon,

THOMAS BERRILL

was called as a witness by and on behalf of the respondent and, having been first duly sworn, was examined and testified as follows:

JUDGE CONSTANTINE: Give your name and address to the reporter.

THE WITNESS: Thomas Berrill, 37 Weaving Lane, Wantagh, New York.

JUDGE CONSTANTINE: Will you speak a little louder so they can hear you over there.

DIRECT EXAMINATION

Q (By Mr. Bogen) Mr. Berrill, what is your profession or occupation?

A Sheet metal contractor.

Q By whom are you employed?

A Lambert Sheet Metal Corp.

Q How long have you been employed by Lambert Sheet Metal?

A Five years.

Q What is your position with Lambert Sheet Metal?

A President.

Q Before your employment with Lambert, what employment

did you have in the sheet metal industry, if any?

A Since 1941, with Charles Hardman Co., most of the time.

Q What is the business or affairs of Lambert Sheet Metal?

A We are sheet metal fabricators and erectors.

Q Does it involve any system, does it involve any specialty work areas?

769 A Specialty work, we make many boxes for Buensod, which includes the variable volume, the dual duct, and other boxes.

Q Are you familiar, sir, with the Carrier moduline unit?

A Not really, I have seen pictures, but I am not familiar with it, no.

* * * * *

772 Q (By Mr. Bogen) Mr. Berrill, what is your knowledge of the function of the Carrier system, if you know?

A I am not a mechanical engineer, so I cannot answer in probably the terms that you expect.

Q Answer in any way you want, sir.

A But, I do know that that system is a system where you can get through a thermostat, a variable amount of air, or more air or less air as the occasion requires. And as the pressure or if the heat goes down, more air comes out, and if the heat in the room rises, you get more air in, and it is done by a thermostat that controls the volume regulator.

773 Q Are there other systems, other than Carrier, that perform that function?

A Certainly.

Q How many do you know that have that?

A I know of some, one is the Buensod versa-trol by Meronca; and it is the versa-trol system.

Q I think you told us you fabricated the Buensod system?

A I have on this job, yes, sir.

Q What job is that?

A The Columbia Presbyterian job. It is a variable volume type system, similar to the moduline.

Q Is the moduline a genetic term or is it a basic term, or is that a trade name?

A No, I think there probably would be a copyrighted pattern name by Carrier.

Q That identifies Carrier systems, does it?

A I believe it does, yes.

Q You said that for the job at the Columbia Presbyterian Hospital, you installed the Buensod system; is that correct?

A Yes.

Q What does that system involve in terms of mechanics?

A In terms of mechanics?

Q Does the Buensod system have a particular name?

A It is called a versa-trol system.

Q Could you describe what that system is, sir?

774 A The versa-trol system is a system whereby you have a volume regulator through which air goes, and it is attached to the plennum, and the plennum is attached to a line diffuser, or a regular diffuser, and it is controlled automatically through the thermostat by air.

Q Mr. Berrill, do you have a picture or a diagram of the system of the Buensod system you have just described?

A Yes, I do.

Q May I see that for a moment, please?

A Yes (handing).

MR. BOGEN: May I have this marked as Respondent's Exhibit 9 for identification.

(The document above referred to was marked Respondent's Exhibit number 9 for identification.)

Q (By Mr. Bogen) I show you the booklet you handed me before, Mr. Berrill, and it has been marked as Respondent's Exhibit 9 for identification, can you describe, or can you identify the booklet without going into the contents of it? What is it?

A Yes, it is a brochure, and it has specifications for a

system of variable control air distribution.

Q By any particular company?

A By Buensod.

MR. BOGEN: I offer Respondent's Exhibit 9 in evidence, Your Honor.

MR. GREEN: I would like a couple of questions on voir dire.

JUDGE CONSTANTINE: All right.

VOIR DIRE EXAMINATION

Q (By Mr. Green) Mr. Berrill, I assume you had nothing to do with preparing this document?

A No.

Q No, you did not have anything to do with preparing that document?

A I said no.

Q How did you happen to get this document?

A How did I happen to get that?

Q Yes.

A I got it from Buensod because we are fabricating the plennum on a job that we are doing, in which they were accepted and are being installed.

Q Do you know whether or not this unit, as described in this document as manufactured by Buensod, is a self-contained

prefabricated unit?

A I can't hear you.

Q Do you know whether or not the unit as described in this document, as manufactured by Buensod, is a self-contained prefabricated unit?

A I imagine it is, yes.

776 Q Do you know?

A No, I don't know.

(End of voir dire examination.)

MR. GREEN: Well, I am going to object to this document because, clearly, there is no foundation that Buensod has made a prefabricated unit, as does Carrier, and, therefore, this unit -- and you can look at it really, it has no comparison whatsoever with the Carrier moduline unit.

JUDGE CONSTANTINE: I have to pass on the basis of the voir dire. I think your point is well taken, Mr. Green, and I will sustain the objection.

MR. BOGEN: May I have an opportunity, Your Honor, just to pursue this for a moment?

JUDGE CONSTANTINE: Go ahead. I will reserve passing on the objection, I am withdrawing the ruling I made.

Q (By Mr. Bogen) Mr. Berrill, what relationship do you have, if any, your company, to Buensod in regard to the

variable volume unit?

A We fabricated and we received the volume regulator from Buensod, and in the case of sheet metal, we build the plennum, both for the masters and for the slaves, and ship them out as a unit.

Q Are you the representative for Buensod Stacey in this area?

A Yes.

777 Q And the unit that you are talking about, do they come already self-contained?

A From Buensod, only the regulator.

Q Where is the portion that you make?

A The plennum and the wrapper to the regulator, we make.

Q The wrapper, is that a box that contained the regulator?

A Yes.

Q Do you have anything to do with the regulator at all?

A We do not make the regulator, no.

Q What other component parts are there to the unit?

A The baffle inside the plennum, which we fabricate, that is a lined wick inside the plennum, which we apply.

Q Do you make any items except for the plennum and the cover for the mechanical unit?

A No.

MR. GREEN: He has already testified that he does.

MR. BOGEN: Excuse me, is this an objection or not an objection?

MR. GREEN: Yes, I object. He is leading the witness, and I think he is impeaching his own witness.

MR. BOGEN: As a matter of fact, that is not my intention, whatever the witness testified to, he testified to, and I am trying to concentrate, at this point, on what, if anything, he has to do with the unit, other than making a wrapper and a plennum box for it.

778 May I proceed?

JUDGE CONSTANTINE: Go ahead.

MR. BOGEN: At this time, Your Honor, I reoffer Exhibit 9.

MR. GREEN: Well, I still think I am going to object, because I don't think that this witness can testify with respect to the design, concept, and make by Buensod, and even though he may be a member of the Buensod sales force, he is not in the employ of Buensod. Maybe he is doing something with some contractual relationship with Buensod, but I don't think he can talk about this.

MR. BOGEN: If Your Honor please, I think the witness described Buensod and what he receives for them, and that

is certainly a foundation to me. Your Honor, what we are talking about now is authenticity of the document, and there is no question about that.

JUDGE CONSTANTINE: I will sustain the objection, I am rejecting the receipt of Exhibit 9. I think the objection is well taken.

Mark that rejected, Mr. Reporter.

Q (By Mr. Bogen) With respect to the Columbia Presbyterian job, when did you bid for that job, sir?

A I would say a year and a half to two years ago.

Q When were you advised that you successfully bid for the job?

779 A A month after we bid it.

Q You mentioned before, the bid included a reference to the Carrier moduline unit or --

A Or an alternate.

Q When you bid the job, did you bid it with the Carrier moduline, or did you bid the alternate?

A I bid the alternate.

Q What alternate did you bid, sir?

A We bid the Buensod alternate.

Q How many units were involved on that job?

A On that job there were 121, including masters and slaves.

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Q (By Mr. Bogen) Did your company fabricate a plennum box, or does it fabricate a plennum box for the Buensod variable volume system?

MR. GREEN: I object. He already testified about that, but I object anyway.

JUDGE CONSTANTINE: I will allow it. I think I know what he is leading to, it is a preliminary question, and I will allow it.

A Yes.

Q Are you familiar, or do you know of the plennum or box of the Carrier moduline unit?

A Yes, I do know of the Carrier moduline unit.

Q Are you familiar, or have you seen what the box or the plennum of that unit looks like?

A Yes, I have seen it a number of times. The point I made when you first asked me, is that I had no experience in installing it, that was the question then.

Q When you said before -- are you saying, when you said you had no knowledge, you mean you had no knowledge and experience in installing it?

A Yes, or making or wrapping them, but I have seen the box, certainly.

Q How many times have you seen the box?

A Three or four times.

Q Have you had a chance to examine the box or the unit that comes with it?

A Yes, I have seen that, yes.

Q Can you compare that unit, the Carrier moduline unit, with respect to the unit that you manufacture for Buensod and Stacey?

A I can compare it in a physical sense.

Q That is what I mean.

A In a physical sense -- I can't compare it as far as A.C.P.N. requirements, but the system of the Buensod is similar, in that it has a plennum, it has a lined plennum, it has a thermostat, it is connected with tubing; that it is from the control system of the building; and that one is connected to the other in a series of bi-flexible pipe, connecting the sheet metal plennums. To me it looks very similar.

Q With respect to the plennum alone, is the plennum, in your opinion, the plennum of the Carrier system, similar to the plennum in the Buensod system?

A I would say it is.

Q Do you know what the plennum of the Carrier system is made of?

A That happens to be made of galvanized iron, ours is made of aluminum.

Q Except for that difference in the material, would there be any other difference that you know of?

A I do not know if a baffle is inside the Carrier, I never looked through the end, but it would be very -- I don't know.

Q What is a baffle?

782 A A baffle is a deflecting item that is covered with a material to meet and spread the air, and reduce noise.

Q Is that item contained in the Buensod system?

A Yes, it is.

Q How many plennum boxes have you fabricated for the Buensod system?

A Since I have been in business, you mean?

Q Yes.

A Since I have been working with an agreement with Buensod, I would say 3,000 to 4,000.

Q For what jobs were the units fabricated?

A I would have to name a hundred jobs, but the one job that we fabricated and erected ourselves was Columbia Presbyterian.

Q Who does it, what category of employees do the fabrication of the plennum box?

A The sheet metal mechanics of Local 28.

Q Did you have a collective bargaining agreement with Local 28, or do you?

A We do.

Q Who does the sketching and drawing of these specifications for the fabrication of the box?

A Our draftsman, a Local 28 draftsman makes the drawings for the shop.

Q After the plennum is fabricated, what happens to it?

783 A Are you talking about the job of Columbia Presbyterian?

Q Yes.

A It goes to the men after the draftsman is finished with it. It goes to our shop, they fabricate it, make it, connect it, if it is a double or triple frame, install the thermostat; the volume regulator, and it goes out as a unit to the job, in which the men on the field install it.

Q The entire assembly of the unit is done at the shop?

A Yes, it is.

Q In this job?

A In this job, yes.

Q Who does the installation of the unit at the job site?

A My field men, Local 28.

Q What category are these men in?

A Mechanics, yes.

Q Has this job been completed yet?

A No, it is not complete.

Q Has there been any testing on the evaluation of the functioning of the unit on the job?

A Not yet, no.

Q Is that part of your contract, to test and balance the system, is it part of the mechanical contractor's contract to balance and test it?

A Not mine.

Q Is there any other work that is done with respect to the plennum or other portions of the unit at your shop, other than what you have described?

784

A We make the colors for the connecting of the plennum.

Q Do you have that portion?

A No.

From there down to the diffusers, we make that portion (indicating).

Q This portion (indicating)?

A Yes.

MR. BOGEN: Indicating the middle portion of Respondent's Exhibit 2.

Q (By Mr. Bogen) You fabricate that?

A Yes.

* * * * *

the moduline unit.

JUDGE CONSTANTINE: I will sustain the objection.

Q (By Mr. Bogen) In addition to the fabrication of the plennum for this unit, that you are describing, does there come a time, or does your company fabricate any other plennums or metal boxes?

A Yes, we do.

Q Is there any difference between the fabrication of the plennum for the variable volume unit and the boxes or plennum that you fabricate for other systems or units?

A Not basically, no, there is no difference. They all have a variable volume regulator, they all have baffles, they all are encased in aluminum boxes, and they all have discharges, and they all have inlets; no, basically, there is no difference.

Q Now, with respect to the other variable volume units that you have made, other than at the Presbyterian Hospital, have you installed those units?

A No.

Q What has happened with respect to these units, sir?

A They were shipped out to the sheet metal contractor who happened to have the job in which these boxes are specified.

Q Who shipped them out?

A We shipped them.

Q What do you ship out, sir?

A We ship out the completed box to the other contractor on

* * * * *

Q (By Mr. Green) Was the result of your bid and the request for the alternate, namely, the Buensod Stacey unit, that this unit was selected for the Columbia Presbyterian job?

A That I cannot answer, because the engineers decide that.

JUDGE CONSTANTINE: Well, the answer is you don't know; is that correct?

THE WITNESS: Yes, I don't know.

Q (By Mr. Green) Did you request or did your company request an alternate to the Carrier moduline unit for that job?

A I don't know, I was not the mechanical contractor.

Q I thought your company did the work of installing --

A We did the sheet metal contractor work, we are subcontracting from the mechanical contractor. I did not make the bid for Columbia.

Q You made a bid to the mechanical contractor?

A Yes.

Q Your bid was to install and fabricate the Buensod

system, or air-conditioning system; is that not correct?

A The mechanical contractor bought the Buensod Stacey units, and we made the plennums for same.

Q I don't think you have answered my question.

Did you ask or advise the mechanical contractor, that you were bidding --

A No, I did not.

Q You would have accepted it as a contractor for it with the Carrier unit for that job; is that what your testimony was?

A No, I didn't say that.

* * * * *

Q (By Mr. Green) Have you ever seen plans or specifications or documents, relating to the Carrier models 37p or 37a?

JUDGE CONSTANTINE: You may answer the question. Have you ever seen them?

THE WITNESS: Yes, I have seen specified documents for a Carrier moduline.

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Q As produced by Carrier Corporation, a drawing made by Carrier Corporation?

A No, I said specifications.

Q Were those specifications setting forth the manufacturer of the Carrier unit, those kind of specifications (indicating)?

A I read them when I was doing the job, they were specifications; I did not see any pictures of the unit, no.

Q Did you do the manufacturing of it, including the manufacturing of the controlled unit or controlled portions of the unit?

A I don't recall.

Q Incidentally, Mr. Berrill, are you a member of Local 28?

A Yes.

Q You pay dues to that union?

A I do.

Q And you are the president of Lambert Sheet Metal company?

A Yes.

MR. BOGEN: I move to object to it, and ask that it be stricken.

JUDGE CONSTANTINE: I will overrule the objection.

Q (By Mr. Green) How long have you been a member of Local 28?

MR. BOGEN: I object to that.

JUDGE CONSTANTINE: I think it has something to do with credibility, I will allow it.

793

Q (By Mr. Green) How long have you been a member of Local 28?

A Since 1941.

Q And you have never resigned from membership in Local 28?
A Yes, I have.
Q But, you are now a member of Local 28?
A Yes.
Q Have you been a member of Local 28 during the entire time that you were president of your company?
A Yes.
Q Do you receive any kind of pension or are you eligible

* * * * *

903 MR. BOGEN: As I indicated, the Respondent calls Mr. Jack McKeogh.

Whereupon,

JACK MC KEOGH

was called as a witness by and on behalf of the Employer and, having been first duly sworn, was examined and testified as follows:

904 JUDGE CONSTANTINE: Please be seated and give your name and address for the record.

THE WITNESS: Jack McKeogh and my home address is 3055 Winsum Avenue, Merrick, Long Island, New York.

JUDGE CONSTANTINE: Go ahead, Mr. Bogen.

DIRECT EXAMINATION

Q (By Mr. McKeogh) Mr. McKeogh, what is your profession or occupation?

A Manager for Essex Metal Works.

Q And how long have you been the manager for Essex?

A Eighteen years.

Q And will you describe, generally, the business operations of Essex?

A We are in, generally, sheet metal work, air conditioning.

Q What does Essex do?

A Well, we do sheet metal fabrication installation, generally.

Q Does Essex maintain a shop?

A We do.

Q What is the work that is performed in the shop?

A Sheet metal work.

Q And, could you describe, generally, your duties and responsibilities as manager of Essex?

905 A Well, I'm in complete charge of the shop and field operations of Essex Metal Works.

Q Did Essex, at any time, perform any work in connection with or in relationship to the Carrier Moduline unit 37A or 37B?

A Yes, we installed 37 --

Q Mr. McKeogh, sir, we have it, if you answer my question directly -- the question at this point simply requires a yes or no.

Did you perform any work?

A Yes.

Q Was the work performed with Moduline --

MR. MCGUINESS: Excuse me, Your Honor. Could I have just a minute.

JUDGE CONSTANTINE: All right, we'll go off the record for a moment.

(Discussion off the record.)

JUDGE CONSTANTINE: Back on the record.

Q (By Mr. Bogen) Mr. McKeogh, I show you what has been introduced as GC, that's General Counsel's Exhibit 3, the Appendix A and ask you whether you recognize or can identify that Exhibit?

A Yes, I do.

Q And is that the Carrier Moduline Unit that Essex performed work on?

906 1 A Yes.

2 Q Now, could you tell us when Essex performed work in

3 regard to the 37P unit?

4

A It was 1970, in the summer of 1970. July or August.

Q Could you tell us where or what job site was involved, if any, with respect to this work?

A It was in Staten Island Community College, Staten Island.

Q How many units were involved in this job?

A Around 216.

Q Could you tell us the circumstances under which Essex obtained this work?

A We were sub-contracted to CDE Mechanical Contracting Company who are situated in Brooklyn.

Q Was this a bid job, did you bid on this job?

A We bid as a sub-contractor to CDE.

Q Do you know what other sheet metal contractors bid on the job, if any?

A At that time?

Q Yes, sir?

A I don't recall.

Q And what portion or -- what work in connection with the Carrier 37P was included in your bid?

A To furnish and install plenums.

907 Q What was the plenum or what is the plenum that you were to install?

A It's a simple box type of affair that sits on top of the unit.

Q Can you indicate that on CC's 3, Appendix A?

A Yes, it's this box up here (indicating.)

Q Indicating the top portion of the unit?

A That's right.

Q Now, you said you were to furnish it. What was needed or what was the furnishing to consist of?

JUDGE CONSTANTINE: My notes show he was supposed to do more. Furnish and install.

MR. BOGEN: And I'm asking what was -- what did the furnishing aspect consist of?

A To fabricate a sheet metal plenum and install it on the module in our shop and then deliver it to the job site.

Q Now, where were you to receive the other portions of the unit, other than the plenum?

A They were shipped directly to our shop.

Q From whom, sir, if you know?

A From CDE, who bought them.

Q Do you know from whom CDE purchased these?

A I don't know, but I would assume --

JUDGE CONSTANTINE: Just answer the question. When you don't know, that's it.

908 A I don't know.

Q (By Mr. Bogen) With respect -- in connection with the fabrication of the metal box, the plenum, did you receive plans or specifications for the fabrication?

A Yes, yes we did.

Q From whom did you receive those?

A They were given to us by CDE.

Q And did your shop or did you -- did Essex make other plans or sketches from those plans?

A Yes, we did.

Q Do you have any of those plans and specifications with you, sir?

A I have one drawing that we made.

MR. BOGEN: May I have this marked Respondent's Exhibit 10?

(The drawing was marked Respondent's Exhibit 10, for identification.)

Q (By Mr. Bogen) Mr. McKeogh, I show you the paper that you handed me and is now marked Respondent's Exhibit 10 for identification and ask you if you can identify the document without going into the details of its' contents?

A It's an Essex Sheet Metal drawing.

Q What is the drawing of, sir?

A It's a drawing of the application of the plenum to the module.

909 L Q For what job, sir?

A For the Staten Island Community College job.

Q That's the job we have been talking about?

A That's the same job.

Q Is that the plenum to be fabricated by Essex for the 37P Carrier unit?

A That's exactly right.

MR. BOGEN: I offer this as Respondent's Exhibit 10, in evidence, at this time, Your Honor.

I have no copies of it. I'm showing it to counsel now.

MR. GREEN: I have no objection.

MR. MCGUINESS: No objection.

JUDGE CONSTANTINE: In the absence of objection, it will be received.

Mark it received, Mr. Reporter.

(The document previously marked Respondent's Exhibit 10, for identification, was received in evidence.)

Q (By Mr. Bogen) After the shop drawings or sketches were completed, sir, what happened, if anything, with respect to the fabrication of the plenums or the boxes that

we are talking about?

A Nothing, to my knowledge.

Q Did there come a time after the sketches were completed that the plenum was fabricated?

A Oh, yes.

Q Where was it fabricated?

A In our shop.

Q What class of employees fabricated the plenum?

A Local 28 sheet metal workers.

Q And, to your knowledge, did these employees have any special training or education with respect to fabricating the plenums or boxes?

A No, it's part of their trade.

Q It's part of what?

A I say it's their trade, it's a sheet metal fabrication. Nothing different about it.

* * * * *

Q After the plenum box was fabricated, what, if anything, happened to the box?

A They were then installed on the module.

Q When you say installed, is that a -- it was secured?

A Secured to it.

Q Was that worked on in the shop or the job site?

912 1 A It was done in the shop.

* * * * *

917 4 CROSS EXAMINATION

5 Q (By Mr. Green) Mr. McKeogh, your work on the Carrier
6 Moduline Unit for the Staten Island Community job, was that
7 the only time that you ever performed any work in relation
8 to Carrier Moduline Units?
9 A Yes.
10 Q Had you ever -- has your company ever worked or done
11 any work with respect to Carrier's Moduline 37A units, which
12 I'm pointing to?
13 MR. BOGEN: Objection, Your Honor.
14 MR. GREEN: That's Exhibit 1.
15 MR. BOGEN: I'll withdraw the objection. Excuse me.
16 A No.
17 Q (By Mr. Green) And you indicated that a Carrier repre-
18 sentative visited your shop in or about June 1970, is that
19 correct?
20 A That's right.
21 Q Incidentally, your shop is located where?
22 A 1904 49th Street, Long Island City. It's adjacent to
23 LaGuardia Airport.

Q Will you describe Essex for us?

A It's a 15,000 square foot building.

Q Is it a factory?

A Yes.

Q Did you speak to the Carrier representative at that time?

A I did.

Q Incidentally, what was your position with the company at that time?

A Manager.

Q Are you a principal of the company?

A No. I'm not a principal.

* * * * *

Do you recall telling the Carrier representative that your company has no die to make the slots as they recommended?

A I don't recall the -- I don't recall, no. I do not.

Q Now, were you using any kind of calibration machinery in fabricating the plenums?

A No.

Q Were you using any kind of calibration machinery to test the mating of the plenum to the control units after it was mated?

A No.

Q Do you have such calibration machinery?
A No.
Q Your shop doesn't own that type of machine, does it?
A No.
Q And your employees don't do that type of function, correct?
A No.
Q They don't do that kind of function?
A No.
Q Do you have engineers employed by your company?
A No, we do not.
Q Your company would make metal boxes, is that correct? That's part of the things your company would make?
A Yes.

* * * * *

Q You also told Mr. Green that your company didn't calibrate, in the shop, the system, the unit after it was fabricated and assembled in your shop?
A That's right.
Q Will you tell us what the purpose of the testing and balancing was?
A To determine the proper amount of air and velocity from the unit. In accordance with the plans and specifications.

* * * * *

EDWARD STACK

was called as a witness by and on behalf of the Employer and, having been first duly sworn, was examined and testified as follows:

JUDGE CONSTANTINE: Please be seated and please give your name and address for the record.

THE WITNESS: My name is Edward Stack and I live at 2243 Elderberry Drive, Westbury, Long Island.

JUDGE CONSTANTINE: Proceed.

DIRECT EXAMINATION

Q (By Mr. Bogen) Mr. Stack, what is your profession or occupation?

A I'm the President of Local Union 28.

Q And how long have you been President of Local 28?

A Since July of '74.

Q Prior to that time, what was your profession or occupation?

A I was a business agent.

Q For whom?

A Local 28.

Q How long were you a business agent for Local 28?

A A little over seven years.

Q Did there come a time in July of 1974 that you had a meeting with Mr. Contardi, regarding the Carrier Moduline Unit?

A Yes.

Q And where did that meeting take place?

A In my office.

Q Will you tell us who was present?

A Mr. Contardi and I believe his associate -- the gentleman that is in the room here.

MR. GREEN: Mr. Webster.

MR. BOGEN: Let the record indicate that the witness is pointing to a gentleman identified by counsel as Mr. Webster.

925 Q (By Mr. Bogen) Will you tell us, as best you can recall, what Mr. Contardi -- was anybody else present with you?

A Not to my recollection.

Q Will you tell us, as best you recall, what was said at that meeting and who said it?

A Mr. Contardi asked me if I was of the mind to implement the agreement between Local 28 and Carrier Corporation, regarding the Moduline Unit for use of the Moduline Unit in the City of New York.

Q And what agreement was he referring to, if you know?

A The agreement that was mailed to Dan Pasquinucci, my predecessor. I believe it was dated March 12th.

Q And what did you say at that time with respect to that?

A I told Mr. Contardi that I would review it and I would -- I told him to call me at the Industry Fund Office in a couple of days or so.

Q At the Industry Fund --

A Yes.

Q Was anything else said at that meeting?

A No, that was pretty much it.

Q Did there come a time, a few days afterwards, when you received a telephone call from Mr. Contardi?

A Yes.

Q Will you tell us what he said in that telephone conversation and what you said, as best you can recall?

926 A He asked me what was the result of my review and I told him that the local union remained consistent with its agreement.

Q Was anything else said?

A No, it was a very short conversation.

Q Except for these conversations that you just described, did you have any conversations with Mr. Contardi or any representative of Carrier with respect to the Carrier

Moduline Unit?

A No.

MR. BOGEN: I have no further questions, Your Honor.

JUDGE CONSTANTINE: You may cross-examine, Mr. Green.

CROSS EXAMINATION

Q (By Mr. Green) You told Mr. Contardi, on the phone, that Local 28's view was that it would remain consistent with the agreement, is that correct?

A That's correct.

Q And the agreement that you referred to is the agreement between Local 28 and the Sheet Metal Contractors Association, is that correct?

A That's right.

Q And/or any other independent sheet metal companies, that have contracts with Local 28?

* * * * *

927 THE WITNESS: Yes.

JUDGE CONSTANTINE: The agreement was between Local 28 —

THE WITNESS: And the Employers Association.

Q (By Mr. Green) And also, were you referring to or meaning agreements between Local 28 and any independent sheet metal companies that had collective bargaining agree-

ments with your union?

A Yes.

Q And when you say you would remain consistent with that agreement, did you explain to Mr. Contardi that that meant you were going to enforce those agreements?

* * * * *

928 A Yes.

Q (By Mr. Green) And consistent with that, there did come a time when you filed a grievance with the Joint Adjustment Board against General Sheet Metal Contractors, alleging that that company was in violation of its agreement with Local 28.

MR. BOGEN: Objection, Your Honor.

JUDGE CONSTANTINE: That goes beyond the direct. I'll sustain it only on that ground.

* * * * *

934 MR. BOGEN: I'll stipulate that at the time he made the conversation or Mr. Contardi made the conversation to him, Mr. Stack was the President of Local 28.

JUDGE CONSTANTINE: All right.

MR. BOGEN: And still is the President of Local 28 as of this morning.

JUDGE CONSTANTINE: Well, all right.

MR. GREEN: I'll stipulate to that.

* * * * *

935 MR. GREEN: Since the Respondent has no further evidence at this point, General Counsel will go ahead with the rebuttal case. Part of the rebuttal case would be, at this point in time, to move for the introduction into evidence of General Counsel's Exhibit 14, which is Mr. Strugis' report, dated 2/14/73 to the Sheet Metal Industry.

JUDGE CONSTANTINE: My notes show 2/1. Is that an error in my notes, the report by Mr. Sturgis to the Sheet Metal Council?

MR. GREEN: Well, the trustees of the Promotion Fund.

JUDGE CONSTANTINE: That's what I call the Sheet Metal Council.

MR. GREEN: You are right.

* * * * *

941 JUDGE CONSTANTINE: Well, I'll receive it, but when we read the record, I'll look upon it as not an expert record, but a report. That goes to its' weight, rather than its' admissibility. So mark it received, Mr. Reporter. It has already been marked rejected, but on another ground.

(The document previously rejected as Exhibit 14 was now marked Exhibit 14, in evidence.)

* * * * *

AUGUSTUS CONTARDI

was called as a witness by and on behalf of the Employer and, having been previous sworn, was examined and testified as follows:

REBUTTAL EXAMINATION

Q (By Mr. Green) Mr. Contardi, were you here yesterday?

A Yes, sir.

Q And do you recall testimony regarding a Bache job?

A Yes, sir.

Q Now, it was located or identified as being on Pearl Street in Manhattan?

A Yes, sir.

Q Did you go some place this morning?

MR. BOGEN: Objection, Your Honor.

JUDGE CONSTANTINE: That's a preliminary question. I'll allow it. Maybe later on, your objection will be well taken, but at the present time it's just preliminary. Just answer the question yes or no, please.

A I did.

Q Where did you go?

A The Bache job at Pearl Street and Cold Street.

Q Did you go into that building today?

A I did.

943 Q And did you check out anything?
A I did.

* * * * *

945 Q (By Mr. Green) Did Carrier sell any Moduline Units, either 37F or 37A to the Bache job?
A No, sir.

* * * * *

947 Q (By Mr. Green) To your knowledge, was there any variable volume units on the Bache job, whether they be manufactured by Carrier or anybody else?
A There are no variable volume units on that job.

* * * * *

956 MR. GREEN: Your Honor, at this point, general counsel would like to have the complaint conformed to the proofs as to dates, times and places in those limited respects.
MR. BOGEN: Are you finished with your motion?
JUDGE CONSTANTINE: The motion is to conform the pleadings on minor matters, to the proofs.
MR. BOGEN: I have no objection.
JUDGE CONSTANTINE: That's the way I interpret it.

* * * * *

957 JUDGE CONSTANTINE: He is going to be more specific.
MR. GREEN: In line with the testimony regarding the

minutes of the Union, as refers to general counsel's Exhibit 6, paragraph 18 of the Complaint should really reflect the dates. You'll notice that the minutes say May and June of 1973. Paragraph 18 of the Complaint says May and it was drawn a long time ago, before we obtained a copy of these --

MR. BOGEN: I don't mean to interrupt. I have no objection with respect to the dates. Not the substance, but the dates being modified to be consistent. In other words, the minutes of paragraph 18 of the Complaint are the minutes we have in evidence here and that's CC's Exhibit 6, I believe.

MR. GREEN: And CC's Exhibit 6 essentially refers to three days. One is May 30, 1973, one is June 5, 1973 and then on the last page, June 21, 1973.

MR. BOGEN: I have no objection to having those dates modified.

JUDGE CONSTANTINE: The motion is granted to that extent. Anything else?

MR. GREEN: No, Your Honor.

* * * * *

JUDGE CONSTANTINE: The hearing will please come to order.

This is a resumed hearing which has been granted

because of the fact that at the time the hearing closed before there was some additional evidence that the General Counsel and the charging party wanted to introduce. I will take that evidence, I will not take anything else.

I don't believe that according to my notes anything else is permissable, because the General Counsel and the charging party and the respondent had all rested except for this particular evidence that is coming in.

Is that a correct statement?

MR. MCGUINESS: That is my understanding, sir.

Shall I declare a recess while you discuss possible stipulations?

MR. MCGUINESS: If you will, Your Honor.

We have worked it out during the recessed hearing, and I believe that we have reached agreement on it, but we need to talk about it for just a moment.

JUDGE CONSTANTINE: We will be in recess. I will not set any time limit, you just let me know when you are ready to proceed.

(Whereupon, a three minute recess was taken.)

9741 JUDGE CONSTANTINE: On the record.

MR. GREEN: The stipulation which has been placed before the Court we would like to have marked and received

as General Counsel's Exhibit 20.

JUDGE CONSTANTINE: All right, mark it for identification, Mr. Reporter.

(The document above-referred to was marked General Counsel's Exhibit 20, for identification.)

JUDGE CONSTANTINE: Any objection?

MR. BOGEN: No objection.

JUDGE CONSTANTINE: In the absence of objections, it is received.

Mark it received, Mr. Reporter.

(The document heretofore marked General Counsel's Exhibit 20, was received in evidence.)

MR. MCGUINESS: Then the charging party would like to recall Mr. Contardi.

JUDGE CONSTANTINE: All right.

Whereupon,

AUGUSTUS CONTARDI,

having been previously sworn, was further examined and testified as follows:

JUDGE CONSTANTINE: I am not going to swear you again, Mr. Contardi, you were sworn in the last time and that oath is still binding on you; any testimony you give is under

oath.

THE WITNESS: Yes, sir.

JUDGE CONSTANTINE: But so that the record is clear, we will let the record show that you are Mr. A. Contardi, and that you are district manager of Carrier Corporation.

Take it from there, Mr. McGuiness.

MR. MCGUINESS: I would like to ask the reporter to mark for identification as, I believe, Charging Party Exhibit 1.

JUDGE CONSTANTINE: According to my notes, it is, but I don't claim to be accurate..

Would you mark it as Charging Party Exhibit 1 for identification.

(The document above-referred to was marked Charging Party Exhibit 1, for identification.)

MR. MCGUINESS: I would like to ask, that is, as a related matter, I would like to ask the reporter to mark as Charging Party Exhibit 2 another letter.

JUDGE CONSTANTINE: Mark it for identification, please, Mr. Reporter.

(The document above-referred to was marked Charging Party Exhibit 2 for identification.)

REDIRECT EXAMINATION

Q (By Mr. McGuiness) Mr. Contardi, I show you what has

been marked as Charging Party Exhibit 1 for identification; would you tell us what that document is (handing)?

A This is a letter from General Sheet Metal addressed to me with a copy of a check issued by General Sheet Metal Works Incorporated to the --

MR. BOGEN: If Your Honor please, I am going to object to any further description except for purposes of identity.

JUDGE CONSTANTINE: Well, I'm allowing it only for purposes of identity.

* * * * *

Q (By Mr. McGuiness) Mr. Contardi, I also show you the document marked as Charging Party Number Two for identification, and ask you as to what that document is (handing)?

A This is an invoice covering the amount of that check issued by General Sheet Metal to Carrier.

Q Mr. Contardi, would you describe the circumstances that led to receipt of the letter which is marked for identification as Charging Party Number One?

* * * * *

Q Could you describe the circumstances which led to the letter which is marked as Charging Party Number One?

A The afternoon after our last hearing, or the day of

our last hearing, I had an appointment with Ed Simek of Colon Mechanical to discuss the fact that General Sheet Metal had stopped working on the Babies Hospital job, and it was rather urgent, because Semik insisted on a meeting that day.

* * * *

981 MR. MCGUINESS: If Mr. Bogen had let the witness finish the answer, I think he will find that there is more to it than just Mr. Simek.

A We met in my office and Morris Lipka was with Mr. Simek.

Q (By Mr. McGuiness) Who is Morris Lipka?

A I don't know what his title is, I guess he is the president of General Sheet Metal.

* * * * *

JUDGE CONSTANTINE: As I said, subject to connection.

A Mr. Lipka said that he had stopped the men working 982 because he had been brought up on charges and was subject to a fine; he could not continue as he was not going to pay the fine.

Simek said he could not tolerate the pressure, because they were involved with other trades and they were

threatening back charges.

I then asked Mr. Morris Lipka to contact Local 28, settle whatever charges he had, and I would pay the charges.

Morris Lipka called Edward Stack from my office, made a date to meet him on Monday; the result of that meeting was I received a call from --

* * * * *

983 JUDGE CONSTANTINE: Let's get to the important thing. Ask him if Carrier did reimburse them.

My notes show that he said that he would pay whatever Local 28 assessed against them. Did he pay it? That is what I want to know. I think that is admissable.

Q (By Mr. McGuiness) You heard the Judge's question, would you answer the Judge's question, Mr. Contardi?

A They either have the check or it is in the mail to

984 them, yes; it was sent to our accounts payable department and it is gone.

MR. GREEN: I'm not sure that he answered the question.

THE WITNESS: Yes, we paid it.

Q (By Mr. McGuiness) Mr. Contardi, did you pay the amount, the same amount that is covered by the check attached to Charging Party Number One?

A Yes.

* * * * *

985 MR. MCGUINESS: Charging party offers in evidence Charging Party Number One.

* * * * *

JUDGE CONSTANTINE: I will receive it.

(The document heretofore marked Charging Party Exhibit 1, was received in evidence.)

MR. MCGUINESS: Charging party offers in evidence Charging Party Exhibit 2.

* * * * *

986 Q (By Mr. McGuiness) Mr. Contardi, what are the services rendered which are listed on Charging Party Exhibit 2?

* * * * *

A This is my reimbursement, this is a bill to us for the amount they paid for their so called fine.

* * * * *

JUDGE CONSTANTINE: I will receive it.

MR. BOGEN: On what basis?

JUDGE CONSTANTINE: On the basis that it explains his oral testimony that they reimbursed General Sheet Metal Works for check for $2,153.60, which General paid to Local 28.

MR. MCGUINESS: Am I to understand you have received Charging Party 2?

JUDGE CONSTANTINE: Yes.

(The document heretofore marked Charging Party Exhibit 2, was received in evidence.)

* * * * *

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